[fol. 105] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of March 29th, 1943

No. 10517

J. M. SARTOR, et al.,

versus

ARKANSAS NATURAL GAS CORPORATION

On this day this cause was called, and, after argument by G. P. Bullis, Esq., for appellants, and Elias Goldstein, Esq., for appellee, was submitted to the Court.

[fol. 106] OPINION OF THE COURT—Filed March 29, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10517

J. M. Sartor, et al., Appellants,

versus

ARKANSAS NATURAL GAS CORPORATION, Appellee

Appeal from the District Court of the United States for the Western District of Louisiana

(March 29, 1943)

Before Hutcheson, Holmes, and McCord, Circuit Judges

HUTCHESON, Circuit Judge:

The suit as originally brought in 1933 was for the value of gas (calculated at the market price) taken by defendant from wells in the years 1927 to 1933, inclusive, under an oil and gas lease in what is known as the Richland Field. The

claim was that though the lease secured to plaintiffs, payment at the market price for all gas taken, defendant, during the years in question, had paid them only 3 cents per [fol. 107] 1000 cubic feet, which plaintiffs alleged was much less than the market price.

The defenses were: a denial that the market price was as claimed by plaintiffs, and an affirmation that defendant had for all the years in suit paid plaintiffs the full market price for all the gas it had taken under the lease; a plea of prescription as to all gas produced and sold prior to March 21, 1930; and pleas in reconvention. Plaintiffs' exception of vagueness to defendant's reconventional demand was sustained, and there was a trial to a jury on the theory advanced by plaintiffs that what in these litigations has come to be known as pipe line contracts were in and of themselves proof of market price. There was a verdict and judgment rejecting defendant's plea of prescription, a finding based on the pipe line contracts, awarding plaintiffs a substantial recovery of a market price considerably above 3 cents for the whole period in suit and a judgment for them.

Appealed to this court, the judgment was reversed [1] because of the error in admitting the pipe line contracts as proof of market price, the court holding, for the reasons stated in the opinion, that the prices stated in these contracts were not, and could not be taken as, the market price stipulated for in the lease. There was also a holding that defendant's plea of prescription should have been sustained. Tried again after the remand, defendant's plea of prescription was sustained, and there was a verdict for plaintiffs for the period from March, 1930, to March, 1933, of $3852.92, and for defendant, on its reconventional demand, for $3,547.35. From the judgment on that verdict, plaintiffs appealed. On that appeal [2] this court determined that in view of the issues tendered on that trial, the plea of prescription should not have been sustained, and affirming the [fol. 108] judgment for the period beginning March 20, 1930, and ending March 20, 1933, it sent the cause back for trial on the issues tendered in respect of the years 1927, 1928, 1929 and 1930, as to which defendant's plea of prescription had been sustained. The cause again coming on

[1] Arkansas Natural Gas Co. vs. Sartor, 78 Fed. (2) 924.

[2] Sartor vs. Arkansas Natural Gas Co., 98 Fed. (2) 527.

for trial, the district judge again ruled that the claims for these years were barred by prescription, and the cause, appealed again, was reversed again[3] because of this ruling with directions to proceed in accordance with the mandate entered on the prior appeal. In the meantime, this court, in *Sartor vs. United Gas Public Service Co.*, 84 Fed. (2) 436, again holding as it had held in *Arkansas Natural Gas Co.*, 78 Fed. (2) 924, that the pipe line contracts were not admissible to prove market price, and that plaintiffs were entitled to receive for the gas not the pipe line prices but the market price at the well, laid down the rule that the object and purpose of the inquiry in a case of this kind is to determine (1) the market price at the well, or (2), if there is no market price at the well for the gas, what it is actually worth there. In the same opinion it was also declared that plaintiffs were entitled to, and defendant should pay them for one-eighth of the gas taken, the market value at the well if there was a market value there, and if there was not, its actual value there. In determining this actual value, said the court, every factor properly bearing upon its establishment should be taken into consideration. Included in these are the fixed royalties obtaining in the leases in the field considered in the light of their respective dates, the prices paid under the pipe line contracts, and what elements, besides the value as such of the gas, were included in those prices, the conditions existing when they were made, and any changes of conditions, the end and aim of the whole inquiry, where there was no market price at the well, being to ascertain upon a fair consideration of all relevant factors, the fair value at the well of the gas produced and sold by defendant. [fol. 109] Also, the Supreme Court of Louisiana in *Sartor vs. United Gas Public Service Co.*, 173 So. 103, held in full accord with our opinions in the two earlier *Sartor* cases, that the pipe line contracts did not represent, and were not admissible to prove, the market value at the well under a lease providing for the payment of market price. Saying: "The theory that royalty owners should receive settlement based upon pipe line prices has been rejected by the Federal Court in two recent cases, *Arkansas Natural Gas Co. vs. Sartor*, 78 Fed. (2) 924, and *Sartor vs. United Gas Public*

[3] Sartor vs. Arkansas Natural Gas Co., 111 Fed. (2) 772.

Service Co., 84 Fed. (2) 436", the court declared [4] that the evidence in the case established that there was a market price at the well, and that this being so, the pipeline contracts were not admissible to overcome or affect the market price so established. Subsequent to the decision of this case, there were three other gas recovery cases decided in this court.[5] In all of these cases, the rules heretofore stated were reaffirmed, and though in the *Pardue* case it was declared that the proof defendant had made of a few sales at the well was not sufficient to establish a market price there for the whole period of the suit, the court reaffirmed the [fol. 110] principle that if the evidence had established such a market price, resort to the pipe line contracts and other

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[4] The court said:

"In the case presently under consideration, the testimony shows that natural gas has a 'market value' at the wells of 3 cents per thousand cubic feet. The defendant called numerous witnesses, all engaged in the business of producing and selling natural gas in the Ouachita and Richland fields. These witnesses without exception testified that the market value of the gas at the wells in the field was 3 cents. Innumerable lease contracts were introduced in evidence, practically all of them showing that the lessors were to be paid royalties based upon the value of the gas at 3 cents per thousand cubic feet.

A detailed review of the testimony introduced by defendant to show the market value of the gas at the wells in these fields would serve no useful purpose. It suffices to say that defendant proved conclusively that the market price in these fields does not exceed 3 cents per thousand cubic feet.

As we have already stated, plaintiff offered no testimony as to the value of gas except that stipulated in the so-called pipe line contracts. Having rejected the theory that the prices stated in these contracts should be accepted as a basis for settlements with these royalty owners, we must rely upon the testimony introduced by defendant to show the market value of gas at the wells or in the fields where it is produced."

[5] Pardue vs. Union Producing Co., 117 Fed. (2) 225; Driskell vs. Union Producing Co., 117 Fed. (2) 229; Hemler vs. Hope Producing Co., 117 Fed. (2) 231.

such testimony to establish the value of the gas would not have been admissible.

The decisions, state and federal, standing thus, the defendant filed its motion in this cause for summary judgment. Averring in it that for the years in question remaining in the suit, there was a prevailing market price of 3 cents or less at the well and there was, and could be, no genuine issue of fact to the contrary for trial to a jury, it supported the motion by numerous affidavits to that effect. Plaintiffs, insisting that in former trials of this case a jury had found for plaintiff a market value in excess of 3 cents, and arguing as they have consistently done, exactly contrary to the decisions of this and the state court, *supra*, that the pipe line contracts were evidence of, and determined, this market value to be more than 3 cents, offered neither affidavit nor proof of any kind rebutting the effect of the affidavits filed in support of defendant's motion that, as to the years in question in this suit, there was a market value at the well of 3 cents, and, therefore, resort to proof of actual value was neither necessary nor proper. The district judge, holding, that under the law, as established by Federal and state decisions, evidence of pipe line prices was inadmissible if the evidence showed that there was a market price at the well, and that it appeared without contradiction that there was such a price, granted the motion for summary judgment and entered judgment accordingly. We think it clear that in so doing, he was right. We have written often [6] on the nature and effect of Rule 56, the rule for summary judgment. Our views, as there expressed, leave in no doubt that the summary judgment rule is a salutary one for the purpose of avoiding unnecessary trials, that is, trials where there is nothing of fact to be tried. [fol. 111] They leave in no doubt too that on such a motion it is the duty of counsel for plaintiff and defendant to fully disclose what the evidence will be on the issues raised by the motion, and of the district judge to proceed on the disclosures thus made. If on such disclosures, it appears that only one verdict could be rendered, that is, that there is no

[6] Americans Ins. Co. vs. Gentile Bros. Co., 109 Fed. (2) 732; Town of River Junction, et al. vs. Maryland Cas. Co., 110 Fed. (2) 278; MacPherson vs. Schram, 112 Fed. (2) 674; Whitaker vs. Coleman, 115 Fed. (2) 305; Board of Public Instruction vs. Meredith, et al., 119 Fed. (2) 712.

disputed issue of fact, it is then the duty of the judge to enter judgment in accordance with the showing made. It will serve no useful purpose to enter into an analysis of the supporting proofs offered by the movant. It is sufficient to say that they establish without contradiction or question of any kind that in the early years of the field involved in this suit, there was a market price for the gas at the well, and that that market price was never at any time during any of the years in question in excess of the 3 cents which defendant consistently paid plaintiffs. If, on a trial to a jury, the evidence should show this, it would be the duty of the judge to direct a verdict for defendant. It was his duty, therefore, on the motion for summary judgment to bring the matter to a close by entering judgment on the motion. The judgment is

Affirmed.

[fol. 112]

JUDGMENT

No. 10517

Extract from the Minutes of March 29th, 1943

J. M. SARTOR, ET AL.,

versus

ARKANSAS NATURAL GAS CORPORATION

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, J. M. Sartor, and others, and the surety on the appeal bond herein, National Surety Corporation of New York, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 120] ORDER DENYING REHEARING

Extract from the Minutes of May 11th., 1943

No. 10517

J. M. SARTOR, et al.,

versus

ARKANSAS NATURAL GAS CORPORATION

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 121] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9496)

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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

No. 2387 at Law.

J. M. SARTOR, ET AL,

versus

ARKANSAS NATURAL GAS CORPORATION.

TRANSCRIPT OF APPEAL

Taken by Plaintiffs

TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT, NEW ORLEANS, LOUISIANA.

Appearances:

Gilbert P. Bullis, Esquire,
Attorney for Plaintiffs-Appellants.

Messrs. Blanchard, Goldstein, Walker and O'Quin,
Attorneys for Defendant-Appellee.

ORIGINAL PETITION.

In the United States District Court for the Western District of Louisiana, Monroe Division.

J. M. Sartor, et al, Plaintiffs,
vs. No. 2387 At Law.
Arkansas Natural Gas Co., Defendant.

To the Honorable Ben C. Dawkins, Judge of said Court:

This petition of James M. Sartor, and of Frank B. Sartor, and of Daniel R. Sartor, all being citizens and residents of the Parish of Richland and State of Louisiana, plaintiffs herein, respectfully shows:

1.

Petitioners attach hereto and make part hereof a contract entitled "Oil and Gas Lease", and reference is here made to said annexed contract for its full contents.

2.

Petitioners acquired and owned three-fifths of all of the rights of grantors or lessors in said contract, by agreement with said grantors dated Nov. 18, 1926, and recorded in Book 69, page 14, of the records of conveyances of Richland Parish, La.

3.

Natural Gas & Fuel Corporation, grantee or lessee under said contract, was a subsidiary of and owned by Arkansas Natural Gas Company, and on March 20, 1928, was merged with, and conveyed all of its property to said Arkansas Natural Gas Co., by act recorded in Book 56, page 471, of the conveyance records of said Richland Parish, La.

4.

Arkansas Natural Gas Company is a citizen and resident of the State of Delaware, being a corporation organized under the laws of that State, but has a main office and agent for the service of legal process, but has a main office and agent for the service of legal process in the City of Shreveport, La. Said Arkansas Natural Gas Co. is hereinafter called "defendant".

5.

Under and by right of said contract, defendant drilled on said land four wells producing natural gas alone, and produced from and utilized and sold off the premises the following quantities of natural gas, computed at 10 ounces above atmospheric pressure:

In the year 1927	549,607,000	cubic feet;
In the year 1928	3,171,865,000	cubic feet;
In the year 1929	2,926,323,000	cubic feet;
In the year 1930	1,726,679,000	cubic feet;
In the year 1931	1,920,111,000	cubic feet;
In the year 1932	1,214,867,000	cubic feet;
Total	11,509,452,000	cubic feet.

6.

The equivalent quantity of gas, corrected to two pounds above atmospheric pressure, is 10,544,960,000 cubic feet, the ratio of volume of the same quantity of gas; at ten ounce pressure, to that at two pounds pressure being as 1.0000 to .9162.

7.

No open market, or public bidding, and no published prices have ever existed for natural gas in the State of Louisiana, hence its value and market price, to which peti-

tioners are entitled under said contract, could be ascertained only from the sales made by defendant and other producers, which sales have been kept secret and hidden from the public and petitioners.

8.

Plaintiffs have only recently been informed of said sales in November, 1932, and from such information now aver that the value and market price of all of said gas was not less than 6½¢ per thousand cubic feet computed at two pounds above atmospheric pressure, and the amount received by defendant from the sale of said gas was not less than $685,422.40, and petitioners are entitled to three-fifths of one-eighth of said sum, being $51,406.69.

9.

Defendant took advantage of its knowledge, and the ignorance of petitioners and their inability of obtain information, to pay to petitioners much less than the sums due them as aforesaid, the total payments to petitioners being only $21,999.75, leaving a balance due petitioners of $29,406.94, which is wholly due, owing and unpaid to petitioners.

10.

In making payments to petitioners, defendant deducted three-fifths of one-eighth of the severance tax due to the State of Louisiana on said gas, said deduction amounting to $1726.41.

11.

Under said contract, petitioners never had any ownership or control of said gas, hence owed no severance tax.

12.

Petitioners reserve the right to claim in other proceedings their claims for gasoline extracted from said gas, and all claims for gas taken since Jany. 1, 1933.

Wherefore petitioners pray that defendant be cited to answer hereto, and after due proceedings, that there be judgment in favor of petitioners, in the proportion of one-third to each, and against defendant, in the full sum of $29,406.94, with interest on said sum at the rate of 5% per annum from the average date when said gas was produced, until paid, and all costs of this suit; pray for all necessary orders and for general relief.

G. P. BULLIS,
Attorney for Petitioners.

Filed March 20, 1933.

4 P-1.

Oil and Gas Lease.

Agreement, Made and entered into 7th day of March, 1927, by and between E. A. Sartor, married but once and then to Addie May Lane, with whom he is now living, of Caddo Parish, La., and F. B. Sartor, married but once and then to Earline Williams with whom he is now living, of Richland Parish, La., party of the first part, hereinafter called lessor (whether one or more,) and Natural Gas & Fuel Corporation, of El Dorado, Arkansas, party of the second part, lessees.

Witnesseth, That the said lessor, for and in consideration of Seventeen thousand five hundred Dollars, cash in hand paid, and other good and valuable considerations, receipt

of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the lessee to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise lease and let unto the said lessee, for the sole and only purpose of mining and operating for oil and gas, and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said products, all that certain tract of land situated in the Parish of Richland, State of Louisiana, described as follows, to-wit:

N½ of NE¼ and SE¼ of NE¼ all in Section 24, Twp. 16 North, Range 5 East; and fractional S½ of SW¼ lying north and west of Boeuff River and fractional NE¼ lying north of Boeuff River, all in Section 19, Twp. 16 North, range 6 East; and N½ of SW¼ and NE¼ of SE¼ and SW¼ of SE¼, all in Section 18, Twp. 16 North, Range 6 East; and fractional N½ of SW¼ lying north of Boeuff River in Section 20, Twp. 16 North, range 6 East; and containing 500.5 acres, more or less.

It is agreed that this lease shall remain in force for a term of 5 years from this date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees:

1st. To deliver to the credit of the lessor, free of cost, in the pipe line to which he may connect his wells, the equal one-eighth part of all oil produced and saved from said leased premises.

2nd. To pay the lessor two hundred dollars each year for each well producing gas only, until such time as the

gas shall be utilized or sold off the premises, and at that time the royalty above named shall cease, and thereafter the grantor shall be paid one-eighth (1/8) of the value of such gas calculated at the rate of market price and no less than three cents per thousand cubic feet, corrected to two pounds above atmospheric pressure, and lessor to have gas free of cost from any such well for all stoves and inside lights in the principal dwelling house on said land during the same time by making his own connections with the wells at his own risk and expense.

3rd. To pay lessor for gas produced from any oil well and used off the premises or for the manufacture of casinghead gasoline, one-eighth net proceeds, for the time during which such gas shall be used, said payments to be made each three months in advance.

If no well be commenced on said land on or before the 7th day of March, 1928, 19...., this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor, or to the lessor's credit in the Richland State Bank at Rayville, La., which bank and its successors are the lessor's agent and which shall continue as the depository regardless of changes in the ownership of said land, the sum of five hundred & no/100 Dollars, which shall operate as a rental and cover the privilege of deferring the commencement of a well for 12 months from said date. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like periods of the same number of months successively. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry hole, then, and in that event if a second well is not commenced on said land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payment of rentals, as above provided, that the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force just as though there has been no interruption in the rental payments.

The lessee shall have the exclusive right to take all waste oil, from its own wells, or coming on this property from other sources, and agrees to pay to lessor an equal one-eighth thereof, if utilized.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid the lessor only in the proportion which their interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of lessor.

When requested by lessor, lessee shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall pay for damages caused by its operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is hereby expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors, or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment, or a true copy thereof; and it is hereby agreed in the event this lease shall be assigned as to part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands upon which said lessee or any assignee thereof shall make due payment of said rental.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgage, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and its term shall continue so long as such operations are prosecuted and, if

production results therefrom, then as long as such production continues. As a further consideration for the above described lease, the lessee binds and obligates itself to pay to lessor the additional sum of five thousand and no/100 dollars ($5000.00) payable from seven-sixteenths (7/16ths) of the first (1st) oil produced, run and marketed from the above described property.

In testimony whereof we sign, this the 7th day of March, 1927.

E. A. SARTOR, (Seal)
F. B. SARTOR. (Seal)

Witness:
J. M. SARTOR,
G. D. CAIN.

State of Louisiana,
Parish of Caddo.

Before me, Nash Johnson, Notary Public in and for Caddo Parish, Louisiana, on this 8th day of March, 1927, personally came and appeared E. A. Sartor, who in the presence of me, said authority, and James U. Galloway and J. D. Jones, competent witnesses, declares and acknowledges that he is the identical person who executed the foregoing instrument in writing, that his signature thereto is his own true and genuine signature, and that he executed said instrument of his own free full, and for the purposes and considerations therein expressed.

Thus done and passed on the day and date hereinabove written, in the presence of the before named and undersigned competent witnesses, who have hereunto subscribed

their names, together with said appearer, and me, said Notary, after reading the whole.

E. A. SARTOR.

Witnesses:
JAMES U. GALLOWAY,
J. D. JONES.

NASH JOHNSON,
Notary Public.

State of Louisiana,
Parish of Richland,

Before me, the undersigned authority, this day personally appeared J. M. Sartor, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as an attesting witness, who being first duly sworn, on his oath, says: That he subscribed his name to the foregoing instrument as a witness, and that he knows F. B. Sartor, the Grantor named in said instrument, to be the identical person described therein, and who executed the same, and saw him sign the same as his voluntary act and deed, and that he, the said J. M. Sartor, subscribed his name to the same at the same time as an attesting witness.

J. M. SARTOR.

Sworn to and subscribed before me, this 7th day of March, 1927.

J. C. SALMON,
Notary Public in and for Richland Parish, Louisiana.

Filed March 20, 1933.

5

ANSWER.

(Title of Court and Case Omitted.)

No. 2387.

Now comes Arkansas Natural Gas Company, made defendant herein, and, with full reservation of its rights under the exception of no cause of action heretofore filed by it, answers plaintiffs' petition as follows:

1.

Paragraph one is denied for lack of information as to whether or not petitioners actually attached to the original petition in this case the oil and gas lease referred to.

2.

Paragraph two is likewise denied for lack of information; and it is specially averred that if the instrument referred to in paragraph two of plaintiffs' petition had as between the parties thereto the effect for which plaintiffs contend, no notice of the execution or existence of such instrument has been given to the defendant as required by the lease upon which plaintiffs base their cause of action.

3.

The allegations of paragraph three of plaintiffs' petition are admitted.

4.

The allegations of paragraph four of plaintiffs' petition are admitted.

5.

The allegations of paragraph five of plaintiffs' petition are admitted.

6.

The allegations of paragraph six of plaintiffs' petition are admitted.

7.

Paragraph seven as written is denied; and it is especially denied that defendant has kept "secret and hidden" from petitioners anything as to which petitioners were entitled or even desired to be informed. It is admitted, however, that there has never been any public bidding or published prices for natural gas in Louisiana, it not being the custom to establish prices for natural gas in that manner; but defendant avers that the value of the gas produced from the lease described in paragraph one of plaintiffs' petition based on the generally recognized fair market price for natural gas in the Richland field was three cents (3¢) per thousand cubic feet computed at two pounds above atmospheric pressure, this being the price at which the pipe line companies which bought the bulk of the gas from the producers were accustomed to pay and did generally pay to the producers throughout the field.

Further answering paragraph seven defendant avers that at the time this lease was entered into and throughout the period of production of gas from the lands covered by it three cents (3¢) per thousand cubic feet computed at two pounds above atmospheric pressure was the price generally paid royalty owners both in the Richland Field and in the Monroe Field which is only a few miles distant from it, it being generally recognized by lessors

and lessees alike both as the prevailing market price and as the price likely to prevail during the life of the Richland Field.

Further answering paragraph seven of plaintiffs' petition, defendant avers that when the aforesaid lease was entered into it was the intention of the parties thereto that until another general and average market price should be established for gas produced and sold in the Richland Field three cents (3¢) per thousand cubic feet computed at two pounds above atmospheric pressure should be the market price at which the lessors' one-eighth (1/8th) royalty on gas should be paid for by the lessee.

8.

The allegations of paragraph eight of plaintiffs' petition are denied.

9.

The allegations of paragraph nine of plaintiffs' petition are denied.

10.

The allegations of paragraph ten of plaintiffs' petition are admitted.

11.

Paragraph eleven of plaintiffs' petition states merely a conclusion of law; that is, nevertheless, denied.

12.

Paragraph twelve of plaintiffs' petition being merely a statement of plaintiffs' intention, is neither admitted nor denied.

13.

Your respondent further shows that during the entire term of the aforesaid lease your respondent has made monthly reports to its lessors A. E. Sartor and F. B. Sartor as to the amount of gas utilized by respondent off the leased premises and your respondent has paid its lessors one-eighth of the value of said gas calculated at the price of three cents (3¢) per thousand cubic feet corrected to two pounds above atmospheric pressure, which monthly statements and settlements were received and accepted by your respondent's lessors as being in accordance with the terms of the lease and as being a full compliance by respondent with its obligations from month to month under the lease; and your respondent especially avers that the monthly reports, settlements and payments made by it were in accord with the meaning of the lease contract as intended, understood and construed both by it and by its lessors.

14.

As to all demands of plaintiffs for royalties claimed to be due them or any of them from gas produced and utilized or sold off the leased premises prior to March 21st, 1930, your respondent especially pleads that this action has prescribed under Article 3538 of the Revised Civil Code.

15.

Further answering, respondent shows that in the oil and gas lease described in paragraph one of plaintiffs' petition it was agreed that the lessee should pay the lessor for gas produced from any oil or gas well and used for the manufacture of casinghead gas one-eighth of the net proceeds for the time during which such gas should be used.

16.

That through an error on the part of your respondent's employees your respondent, beginning with the month of January, 1928, has paid to A. E. Sartor and F. B. Sartor, lessors under the aforesaid lease—not one-eighth of the net proceeds of the gas used for the manufacture of casinghead gas—but one-eighth of the gross proceeds, resulting in a large overpayment to the said A. E. Sartor and F. B. Sartor on this score.

17.

That the amount of such overpayment to F. B. Sartor was at least Two Thousand Ninety-four and 76/100 ($2,094.76). Dollars, which amount your respondent is entitled to recover back as having been paid to the said F. B. Sartor in error.

18.

In the alternative, and only if it should be finally determined that the agreement described in paragraph two of plaintiffs' petition was effective as to your respondent without service of a copy thereof or written notice thereof as required by the terms of the lease, then and in that event your respondent shows the plaintiffs James M. Sartor and Daniel R. Sartor must have received the benefits of the error of your respondent's employees in settling for the proceeds of gas used for the manufacture of casinghead gas to the extent of one-fifth (1/5) each of such overpayment, which overpayment as to each of them was Eight Hundred Thirty-seven and 90/100 ($837.90) Dollars.

Wherefore, your respondent prays that the plea of prescription be sustained; that the demands of plaintiffs against it be rejected in toto and at their cost; and that

respondent do have and recover judgment against F. B. Sartor in reconvention in the full sum of Two Thousand ninety-four and 76/100 ($2,094.76) Dollars, together with interest at the rate of five per cent (5%) per annum from date of filing this answer until paid.

Your respondent further prays that plaintiffs be condemned to bear the cost of this proceeding.

In the alternative and only if it should be finally determined that the agreement described in paragraph two of plaintiffs' petition was effective as to your respondent without service of a copy thereof or written notice thereof as required by the terms of the lease, then and in that event your respondent further prays that it do have and recover judgment against James M. Sartor in reconvention in the full sum of Eight Hundred Thirty-seven and 90/100 ($837.90) Dollars and against Daniel R. Sartor in reconvention in the full sum of Eight Hundred Thirty-seven and 90/100 ($837.90) Dollars together with interest at the rate of five per cent (5%) per annum from the date of filing this answer until paid.

W. H. ARNOLD,
BLANCHARD, GOLDSTEIN,
WALKER AND O'QUIN,
Attorneys for Respondent.

Filed Nov. 5, 1933.

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10 VERDICT OF JURY.

"We, the Jury, find for the plaintiff fixing the market price of gas at 4½ cents for 1927 to 1932 inclusive. Said price to be paid at point of delivery.

We, the Jury, further find the plea of prescription not good.

JOHN B. PITTMAN,
Foreman.

Filed April 20, 1934.

11 JUDGMENT.

No. 2387.

In this case in accordance with the verdict of the jury,

It is Ordered, Adjudged and Decreed that the plaintiffs James M. Sartor, Frank B. Sartor and Daniel R. Sartor do have and recover judgment, in the proportion of one-third each, against the defendant Arkansas Natural Gas Company in the full sum of nine thousand four hundred ninety & 46/100 Dollars, together with interest on said sum at the rate of five per cent (5%) per annum from March 21st, 1933, until paid, and all costs of this suit.

In further accordance with the verdict of the jury, it is Ordered, Adjudged and Decreed that the plea of prescription of three years liberandi causa filed by the defendant be and it is hereby overruled.

The law being in favor thereof; it is Ordered, Adjudged and Decreed that the plaintiffs' exception of vagueness filed with relation to the defendant's reconventional demand be sustained and that the defendant's reconventional demand be rejected as in case of nonsuit, with reservation to the defendant of the right to renew the demand in a separate proceeding.

It is further Ordered and Decreed that the plaintiffs' demand for a refund of the severance tax be and it is hereby rejected.

Thus done, read and signed in open Court on this 15 day of May, 1934.

BEN C. DAWKINS,
Judge.

Filed May 15, 1934.

12 MANDATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

The President of the United States of America.

To the Honorable the Judge of the District Court of the United States for the Western District of Louisiana—Greeting:

(Seal)

Whereas, lately in the District Court of the United States for the Western District of Louisiana, before you, in a cause between J. M. Sartor, and others, plaintiffs, and Arkansas Natural Gas Company, defendant, No. 2387, at law, wherein the judgment of the said District Court entered in said cause on the 15th day of May, A. D. 1934, was partly in favor of said plaintiffs, and partly against Arkansas Natural Gas Company, defendant, as by the inspection of the transcript of record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Fifth Circuit, by virtue of an appeal sued out by Arkansas Natural Gas Company, and a cross-appeal sued out by James M. Sartor, et al, agreeably to the Act of Congress, in such case made and provided fully and at large appears.

And whereas, in the present term of November in the the year of our Lord one thousand nine hundred and thirty-four, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On Consideration Whereof: It is now here Ordered and Adjudged by this Court, that the judgment of the said District Court on the direct appeal in this cause be, and the same is hereby, reversed; and that this cause be, and

it is hereby, remanded to the said District Court for further proceedings in accordance with the opinion of this Court;

It is further Ordered and Adjudged that the judgment of the said District Court in this cause on the cross-appeal be, and the same is hereby, affirmed;

It is further Ordered and Adjudged that the appellees and cross-appellants, James M. Sartor, and others, and the surety on the cross-appeal bond herein, American Surety Company, of New York, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

August 23rd, 1935.

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13 EXTRACT FROM THE MINUTES OF FEBRUARY 25th, 1935.

Arkansas Natural Gas Company

vs. No. 7467.

James M. Sartor, et al

On consideration of the motion of Mrs. Earline W. Sartor, as Administratrix of the Succession of Frank B. Sartor, deceased, and the exhibit attached thereto, it is Ordered that Mrs. Earline W. Sartor, Administratrix of the Succession of Frank B. Sartor, deceased, be substituted as a party appellee in this cause in the place of Frank B. Sartor, one of the appellees, deceased.

James M. Sartor, et al,

vs. No. 7522.

Arkansas Natural Gas Company.

On consideration of the motion of Mrs. Earline W. Sartor, as Administratrix of the Succession of Frank B. Sar-

tor, deceased, and exhibit attached thereto, it is Ordered that Mrs. Earline W. Sartor, Administratrix of the Succession of Frank B. Sartor, deceased, be substituted as a party cross-appellant in this couse in the place of Frank B. Sartor, one of the cross-appellants, deceased.

You, Therefore, Are Hereby Commanded that such execution and further proceedings be had in said cause as according to right and justice, and the laws of the United States ought to be had, the said appeal and cross-appeal notwithstanding.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, the Seventh day of October, in the year of our Lord one thousand nine hundred and thirty-five.

OAKLEY F. DODD,
Clerk, U. S. Circuit Court of Appeals for the Fifth Circuit.

Filed October 8, 1935.

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14 VERDICT OF THE JURY.

"We, the Jury, find for the Plaintiffs that the average price of gas at the well in Richland Parish, Louisiana, field during the period beginning March 20, 1930, and ending March 20, 1933, to be .0445 per 1000 cu. ft. at 8 oz. pressure.

D. M. KELL,
Foreman.

Oct. 14, 1937.

Filed Oct. 15, 1937.

United States District Court, Western District of Louisiana, Monroe Division.

James M. Sartor, et al.,
vs. No. 2387 At Law.
Arkansas Natural Gas Company.

This case having been duly heard, argument had on the motion of defendant for a directed verdict and on the plea of prescription of three years, liberandi causa, filed by the defendant, the law and the evidence being in favor thereof,

It is Ordered, Adjudged and Decreed that the plea of prescription of three years, liberandi causa, filed by the defendant be and it is hereby sustained and plaintiffs' demands rejected as to all demands for additional payments on gas produced prior to March 20th, 1930.

In accordance with the verdict of the jury in this case, it is Ordered, Adjudged and Decreed that the plaintiffs, James M. Sartor, Daniel R. Sartor and Mrs. Earline Sartor, administratrix of the succession of Frank B. Sartor, deceased. do jointly have and recover judgment against the defendant, Arkansas Natural Gas Company, in the full sum of Three Thousand Eight Hundred Fifty-two and 92/100 Dollars, with interest at the rate of five per cent (5%) per annum from March 20th, 1933, until paid and all costs of this suit.

It is further Ordered, Adjudged and Decreed that the motion for a directed verdict as to defendant's reconventional demand be likewise sustained and that defendant do have and recover judgment against James M. Sartor, Daniel R. Sartor and Mrs. Earline Sartor, administratrix of the succession of Frank B. Sartor, deceased, jointly, in the sum of Three Thousand Five Hundred Forty-seven and

35/100 ($3,547.35) Dollars, with interest at the rate of five per cent (5%) per annum from September 13th, 1937, until paid.

This done, read and signed at chambers at Shreveport, Louisiana, all parties consenting to the signing of the decree at chambers, on this 30th day of December, 1937.

BEN C. DAWKINS,
Judge.

Filed January 7, 1938.

United States Circuit Court of Appeals for the Fifth Circuit.

The President of the United States of America.

To the Honorable the Judge of the District Court of the United States for the Western District of Louisiana—Greeting:

(Seal)

Whereas, lately in the District Court of the United States for the Western District of Louisiana, before you, in a cause between James M. Sartor, and others, plaintiffs, and Arkansas Natural Gas Company, defendant, No. 2387, At Law, wherein the judgment of the said District Court entered in said cause on the 30th day of December, A. D. 1937, was partly in favor of James M. Sartor, and others, plaintiff, and partly in favor of Arkansas Natural Gas Company, defendant, as by the inspection of the transcript of record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Fifth Circuit, by virtue of appeals sued out by Arkansas

Natural Gas Corporation and James M. Sartor, et al, agreeably to the Act of Congress, in such case made and provided, fully and at large appears,

And Whereas, in the present term of November in the year of our Lord one thousand nine hundred and thirty-seven, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed so far as the verdict of the jury fixed the market value of the gas upon which plaintiff is entitled to recover royalties and so far as the Court determined the amount due in reconvention; and that the judgment of the said District Court in this cause as to the amount determined by the Court to be due plaintiffs be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to enter judgment in conformity with the opinion of this Court;

It is further Ordered and Adjudged that the appellant, Arkansas Natural Gas Corporation, and the surety on its appeal bond herein, The Fidelity and Casualty Company of New York, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

August 10, 1938.

You, Therefore, Are Hereby Commanded that such execution and further proceedings be had in said cause as according to right and justice, and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, the 20th day of December, in the year of our Lord one thousand nine hundred and thirty-eight.

(S.) OAKLEY F. DODD,
Clerk, U. S. Circuit Court of Appeals for the Fifth Circuit.

Filed December 21, 1938.

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19 JUDGMENT.

(Title Omitted.)

In this suit, judgment having been rendered by this Court on December 30th, 1937, and said judgment having been affirmed by the United States Circuit Court of Appeals for the Fifth Circuit, on appeal, and being now final and res adjudicata on all issues therein adjudged, except as to the claims made by plaintiff for gas produced prior to March 20th, 1930, as to which claims said Court of Appeals remanded this case to this Court for further proceedings; and this Court having considered said claims; for reasons assigned in written opinion herein filed dated September 14th, 1939, it is

Ordered, Adjudged and Decreed, that all claims of plaintiffs herein for additional payments as royalty for gas produced prior to March 20, 1930, are barred by the prescription of three years established by Article 3538 of the Civil Code of Louisiana.

Rendered, Read and Signed in open Court at Monroe, La., this 23 day of October, 1939.

BEN C. DAWKINS,
United States District Judge.

Filed Oct. 23, 1939.

No. 2387.

United States Circuit Court of Appeals for the Fifth Circuit.

The President of the United States of America.

To the Honorable the Judge of the District Court of the United States for the Western District of Louisiana—Greeting:

(Seal)

Whereas, lately in the District Court of the United States for the Western District of Louisiana, before you, in a cause between James M. Sartor, and others, plaintiffs, and Arkansas Natural Gas Corporation, defendant, No. 2387, at Law, wherein the judgment of the said District Court entered in said cause on the 23rd day of October, A. D. 1939, was in favor of said defendant, and against James M. Sartor, and others, plaintiffs, as by the inspection of the transcript of record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Fifth Circuit, by virtue of an appeal sued out by James M. Sartor, et al, agreeably to the Act of Congress, in such case made and provided, fully and at large appears,

And Whereas, in the present term of November in the year of our Lord one thousand nine hundred and thirty-nine, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court, with directions to proceed in accordance with our mandate in appeal cause, No. 8770;

It is further Ordered and Adjudged that the appellee, Arkansas Natural Gas Corporation, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

May 16, 1940.

"Sibley, Circuit Judge, concurring specially."

You, Therefore, Are Hereby Commanded that such execution and further proceedings be had in said cause as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States, the 10th day of July, in the year of our Lord one thousand nine hundred and forty.

OAKLEY F. DODD,
Clerk, U. S. Circuit Court of Appeals for the Fifth Circuit.

Filed July 11, 1940.

22 MOTION FOR SUMMARY JUDGMENT.

(Title Omitted.)

Now comes Arkansas Natural Gas Corporation, defendant herein, and with respect shows that all issues in this case have been disposed of except with regard to the settlement between the plaintiffs and the defendant for gas produced and sold during the period beginning at some time in the year 1927 and ending March 19th, 1930.

Defendant further with respect shows that there exists no reasonable basis for dispute as to what was the market price at the well for gas produced during the period beginning with the year 1927 and ending March 19th, 1930, there having been during this period a market at the well for such gas with an established price of three cents (3¢) per MCF calculated at two pounds (2#) above atmospheric pressure. The plaintiffs are here suing for royalties claimed by them to be due over and above those paid them upon the theory that the market price of gas in the Richland Parish field during the period referred to exceeded 3¢ per MCF.

Defendant further with respect shows that of the oil and gas leases granted on lands in and adjacent to the Richland gas field and filed for record in the office of the Clerk of Court of Richland Parish, Louisiana, considerably more than 90% thereof stipulated that the lessee should be bound to pay to the lessor a royalty on the gas produced on the basis of 3% per MCF calculated at two pounds above atmospheric pressure and that in practically all of the cases where a higher price for royalty gas than 3¢ per MCF was paid or agreed to be paid the increase in the price was the result of a compromise between the lessor and the lessee of a dispute concerning the continued existence of the lease, the higher price being paid to the

lessor in order to induce him to abandon the dispute; and that substantially all of the gas that was sold by independent operators and well owners in the Richland field was sold at the price at the well of 3¢ per MCF or less. Among these independent operators who made such sales in the open market at the well and thus aided in establishing a market price for gas at the well in the Richland Parish field were the Ruston Drilling Company, which on August 5th, 1927, entered into a contract with the Natural Gas & Fuel Corporation; T. L. James, who on September 20th, 1928, entered into a contract with the Richland Gas Company; Richland Operating Company, which on July 27th, 1927, entered into a contract with the Centry Carbon Company; Franklin Oil & Gas Company, Inc., which on March 3rd, 1930, entered into a contract with International Gas Products, Inc.; W. C. Feazel, et al, who on April 18th, 1930, entered into a contract with International Gas Products, Inc. A number of other contracts were entered into by independent operators and well owners at 3¢ or less per MCF; but these contracts were entered into subsequent to April 19th, 1930, and for that reason only are not listed here.

Defendant further with respect shows that the Union Producing Company and its predecessors in title and associated and affiliated corporations maintained during the entire period heretofore referred to in the Richland field a market for gas at the well at the price of 3¢ per MCF, less a charge of ¾¢ per MCF for compression when, as and if compression should be required in order to make deliveries of gas into the field gathering system of the vendee, and that the price of 3¢ per MCF was considered by all producers of gas operating in the Richland gas field from the time that the field was opened until it ceased to produce, and at all times during the period heretofore referred to, to be the market price or value of gas delivered at the well.

Defendant further with respect shows that it has been determined by the Supreme Court of Louisiana in the case of Mrs. Janie May Sartor, et al, vs. United States Gas Public Service Company, No. 34,131 on the docket of that Court, the opinion of the Court being reported in 186 La. 555, 173 So. 193; that the market price at the well in the Richland Parish field did not at any time exceed 3¢ per MCF and that under the law of Louisiana the landowners who had stipulated for royalties based on market price at the well were not entitled to be paid on the basis of the prices stipulated in the so-called pipe line contracts upon which the plaintiffs here relied; and the Court further held that the highly onerous obligations assumed by the sellers in the pipe line contracts such as, for example, the obligations to deliver specified annual minimum amounts of gas to the buyer and to be prepared to deliver up to twice this amount at the buyer's option, together with the expense of maintaining gathering systems, installing meters, keeping accounts, etc., were worth at least the difference between the prices stipulated in the pipe line contracts and 3¢ per MCF at the wellhead.

In this connection defendant points out that the prices stipulated in the pipe line contracts were on an advancing scale, the lowest prices being for the first two or three years, as the case might be, and higher prices being required during subsequent years, so that even under these pipe line contracts the prices paid for gas during the period heretofore referred to were lower than the prices required to be paid during subsequent years.

Defendant further with respect shows that the Richland field was only a few miles distant from the Monroe field, which was a much larger field and was producing gas in larger quantities before the Richland field was discovered and is still producing gas in large quantities; that the price of gas at the well in the Richland field was largely

influenced and determined by the price of gas at the well in the Monroe field; that there has at all times been a market at the well for gas in the Monroe field at the price of 3¢ per MCF computed on a pressure basis of two pounds above atmospheric pressure; and that this price has been generally recognized to be the prevailing and settled market price of gas at the well in both the Monroe and Richland fields.

Defendant further with respect shows that the averments of fact set forth in this motion are accurate and correct beyond dispute and that there can be no substantial issue of fact with regard to these averments; and in support of this motion defendant hereto annexed a number of affidavits of persons of the highest credibility and with the most comprehensive information concerning the production of gas from the Richland gas field during the period referred to and the maintenance of a wellhead market in that field and the established price of 3¢ per MCF for gas at the well in the Richland field.

Defendant further with respect shows that the bulletins issued by the United States Department of Commerce, Bureau of Mines, dealing with natural gas during the years 1927, 1928, 1929 and 1930, and particularly those portions of said bulletins which give the average prevailing wellhead price of gas in the State of Louisiana for the period referred to so that the average wellhead price of gas at the well in the State of Louisiana during the aforesaid period was 3¢ per MCF or less.

Wherefore, defendant prays that a summary judgment be granted herein in its favor declaring that the wellhead price of gas produced in the Richland Parish field during the period beginning with the year 1927 and ending March 19th, 1930, was not more than 3¢ per MCF and that accordingly the demands of plaintiffs against defendant for

royalties on gas produced during such period in excess of the royalty based on a market price of 3¢ per MCF which has heretofore been paid them be rejected at their cost.

In the alternative only, defendant prays that this Honorable Court find and determine such facts as are material to the issues yet remaining in this cause as to which no substantial controversy exists.

(S.) H. C. WALKER, JR.,
424 First National Bank Building,
Shreveport, Louisiana.

(S.) ELIAS GOLDSTEIN,
Attorneys for Defendant.
424 First National Bank Building,
Shreveport, Louisiana.

I hereby certify that a copy of the above and foregoing motion and of all the annexed affidavits and exhibits have been served on Mr. G. P. Bullis, counsel for plaintiffs, by mailing same to him at Vidalia, Louisiana.

This 1st day of April, 1942.

(S.) ELIAS GOLDSTEIN,
Of Counsel for Defendant.

Filed April 3, 1942.

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27 ORDER.

Upon consideration of the above and foregoing motion and the documents thereto annexed,

It is Ordered that a hearing be had upon the defendant's motion for summary judgment on the 16 day of April, 1942, at ..... M. in the United States Court Room at

Monroe, Louisiana; and that notice of the date of such hearing be given immediately to counsel for both plaintiffs and defendant.

This 3rd day of April, 1942.

(S.) BEN C. DAWKINS,
Judge, United States District Court.

Filed April 3, 1942.

ANSWER TO MOTION FOR SUMMARY JUDGMENT.

28 (Title Omitted.)

Now comes J. M. Sartor, et als, plaintiffs in the above entitled case, and answers defendant's motion for summary judgment, as follows:

1.

Summary judgment in this case is absolutely impossible for the following reasons:

(a). All of the facts and issues in this case have been twice submitted to a jury of 12 men, under instructions from the Court, and have been twice decided in favor of plaintiffs by said juries;

(b). Every fact, and every witness, and every claim and every document in or attached to defendant's motion for summary judgment, has been twice submitted to a jury of twelve men in this very case, and has been twice rejected and held to be worthless and unfounded by said juries;

It is therefore impossible now to claim that these issues are favorable to defendant, and far more, that they are so favorable to defendant that they present no genuine issue as to any material fact favorable to plaintiffs.

2.

On the last trial of this case, on October 14, 1037, the jury found the market price of natural gas to which plaintiff is entitled in this suit, for gas produced on March 20, 1930, to be 4.45¢ per MCF; defendant, in this motion for summary judgment, asks this Court to hold that the market price on March 19, 1930, was less than 3¢, and that this market price is so clear and certain that there is no substantial controversy to the contrary. Such a claim, asking the Court to hold that the market price of gas on March 19, 1930, was 3¢, and on March 20, 1930, was 4.45¢, is frivolous and unworthy of the dignity of this Court and not fit for serious consideration.

3.

Plaintiffs specially plead as res adjudicata of all claims made by defendant in its motion for summary judgment, the verdict of the jury on this case on October 14, 1937, and the judgment of this Court in this case on December 30, 1937.

4.

The reasons presented by defendant in its motion for summary judgment are utterly untenable, and frivolous and unworthy of serious consideration, for the following reasons:

5.

The first reason assigned is that numerous leases were made on lands in and adjacent to the Richland gas field

stipulating for a royalty to lessor of 3¢ per MCF for any gas produced under the lease. A lease is a contract whereby a land-owner grants the right to enter on his land for the purpose of drilling for minerals, receiving for said right, a valuable consideration. Hence such a contract is not a sale of gas, and is utterly immaterial and irrelevant to the issue of what was the market price of gas. In leasing land, a land-owner had the opinion of stipulating that any gas produced should yield to him royalty at a fixed sum, such as 3¢ per MCF., or the land-owner could enjoy the benefit of any increase in the value of gas, by stipulating that the royalty should be paid at the market price, whether more or less than 3¢. In the lease at bar, plaintiffs elected to risk the probability that gas would be worth more than 3¢, by stipulating that they should receive the market price. Hence the fact that certain other land-owners elected not to risk or gamble on whether gas would be worth more or less than 3¢, but to accept a fixed sum of three cents, has not the slightest bearing or materiality to the issue of what is the market price to which plaintiffs are entitled, and to permit such evidence to be introduced, is a gross injustice to plaintiffs. Plaintiffs further show that this suit has now been pending almost ten years, and in that time no Court or litigant has shown the slightest reason why leases are admissible in evidence on the subject of market price, or many any answer whatever to the position taken by plaintiffs as above stated. It is a gross injustice to plaintiffs to permit any evidence to be introduced, which plaintiffs show could have not the slightest relevancy, and for which defendant makes no attempt to show any relevancy. Counsel for defendant remains silent under plaintiffs' repeated challenges to show relevancy thereof, showing defendant's bad faith in attempting to use such evidence.

6.

The second reason alleged by defendant for summary judgment is that certain independent operators in the Richland gas field sold gas at 3¢ per MCF or less. Defendant is in bad faith in making this claim, because defendant well knows that these sales were trivial and that almost all the gas produced in the Richmond gas field was sold to large pipe lines, and that a few independent producers could not sell to these pipe lines, because of the small quantity they produced and because the sales to the pipe lines had been closed before they started production, hence these trivial sales were at less than the pipeline price. Defendant enumerates as such sales, first, a sale by Ruston Drilling Co. to Natural Gas & Fuel Co. on Aug. 5, 1927. Defendant well knows that this was merely a sale of a small quantity of gas to be used in drilling wells, and only a trivial amount of gas was sold under this contract, and that the price at which this gas was sold was not 3¢ per MCF at 2 lb. pressure, but was a higher price. Second, defendant enumerates a sale by T. L. James & Co. on Sept. 20, 1928, to Richland Gas Company. This sale was far in excess of 3¢ per MCF at 2 lb. pressure. Next defendant enumerates a sale by Richland Operating Co. to Century Carbon Co. on July 27, 1927; this was not for delivery in the Richland Gas field, and did not stipulate a price of 3¢ per MCF at 2 lb. pressure as falsely stated by defendant in its motion, but was a complicated contract for the establishment of a carbon black plant. Next defendant enumerates a contract between Franklin Oil & Gas Co. and International Gas Products Co. on March 3, 1930. This was not made until March 30, 1930, and only a trivial amount of gas was sold.

The bad faith of defendant in this contention is shown by the fact that defendant well knows that the sales stated by them are not only above the price stated (except as to

the last sale), but are also only a trivial part of the whole sales in the Richland gas field, and that during the period of these sales, defendant itself was buying gas at far higher prices than these sales, and that practically all of the gas sold in the field was being sold at far higher rates, all of which defendant omits in bad faith from its motion.

7.

Defendant next claims that the Union Producing Co. and its predecessors in title maintained during the entire period here involved, a market for gas at the well of 3¢ per MCF for gas in the Richland Gas Field. This statement is false and untrue, and plaintiffs claim that defendant cannot produce a shred of evidence to sustain such a statement of fact.

8.

Next defendant claims that the Supreme Court of Louisiana held in a cited case that 3¢ per MCF was the market price of gas in the Richland gas field. This is correct, but defendant failed to state that this decision was based on the facts adduced on the trial of that case, which are vastly different from the facts adduced on the trial of the case at bar, and that decision on facts in one case does not settle the facts in another case because each case has to be decided on the evidence in its own case.

Defendant also omits from its statement the well known fact that six juries in this Court (two in the case at bar), being a total of 72 intelligent and well-qualified jurors, have unanimously decided that the market price of gas in the Richland gas field is more than 3¢ per MCF.

9.

Defendant next contends that the prices in the Monroe Gas Field did not exceed 3¢? Defendant is in bad faith

in this claim, because defendant well knows that this Court has repeatedly ruled, in this case, that sales outside of Richland Parish are not relevant to the issues in this case.

10.

Defendant next contends that the affidavits annexed to its motion are correct. Plaintiffs annexed to this answer, affidavit showing in detail the incorrectness and error of these affidavits, which annexed affidavit is made part of this annswer.

Plaintiffs further show that the affidavits annexed to defendant's motion should be stricken from the record, because they do not conform to the rules of this Court, especially Rule 56 (e) of the Rules of Civil Procedure, that affidavits shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify. Plaintiff shows that much of said evidence is hearsay testimony purporting to be statements of statements made by other parties; that said affidavits are mainly expressions of opinion by the affiant, and affiant is not shown to be qualified to express an opinion, and plaintiffs have not been afforded their right to cross examine said witnesses as to their competency to express opinion, hence all of said opinions are inadmissible.

Plaintiffs further show that almost all of the facts and sales recited in the affidavits annexed to defendant's motion are immaterial and irrelevant because they occurred after the period involved in this proceeding, which is from the year 1927 to March 20, 1930, and are oral testimony regarding contents of written documents.

Plaintiffs therefore move that the affidavits attached to defendant's motion be stricken from the record. Plain-

tiffs further show that said affidavits are in bad faith for the reasons above stated.

11.

Defendant next annexes to its motion a bulletin alleged to be issued by the U. S. Bureau of Mines, purporting to show that the average market price of gas in the State of Louisiana is 3¢ per MCF. Defendant well knows that this document is inadmissible in evidence because entirely unauthenticated and with no proof whatever of its genuineness, and for the further reason that this Court has repeatedly ruled that the only evidence on market price admissible in this case is for sales within the Richland field, hence a statement of sales all over the State of Louisiana has no bearing whatever on the issue in this case, and merely cumbers the record, and is entirely inadmissible.

12.

On May 10, 1929, defendant itself made written contracts to buy, and did actually buy and receive, immense quantities of gas for delivery within the Richland gas field at the price of 4½¢ per MCF at 8 ounce pressure, which sales and deliveries continued until long after March 20, 1930.

13.

In the years 1928 and 1929, many pipe lines were built into the Richland gas field, and bought gas in said field, all in excess of the amount paid by defendant to plaintiff, and mostly at prices exceeding 4¢ per MCF.

14.

The sales recited in paragraphs 12 and 13 above, were sales of almost all of the gas produced in the Richland gas field prior to March 20, 1930.

15.

To prove said sales recited in paragraphs 12 and 13 hereinabove, plaintiffs annex hereto and make part hereof an agreed statement of facts, filed in this suit by plaintiffs and defendant jointly on or about April 18, 1934, showing said sales and other matters, said agreed statement being annexed hereto by reference, it being already on file in the record of this case.

16.

All of said sales were well known to defendant, and were proved by admissions of defendant in this case, hence the failure of defendant's motion for summary judgment to mention any of said sales, shows that said motion is made in bad faith and conceals by silence most of the facts in this case.

17.

The undisputed facts in this case, repeatedly proven on trials, are that during the period of time involved in this proceeding, from the year 1927 to March 20, 1930, all sales of gas in the Richland gas field were made at prices more than the amount paid by defendant to plaintiff as the market price of gas, and all of the claims made by defendant in this motion for summary judgment have been rejected, and decided against defendant, by two juries in this case. Said motion for summary judgment is therefore filed in bad faith, because it is impossible under such facts for there to be no genuine issue as to any material fact in favor of a plaintiff who has won before a jury twice on these facts. Even if defendant believes in good faith that the facts stated in its motion for summary judgment entitled defendant to a verdict on he merits, still defendant could not possibly claim that there is no substantial controvesy, or genuine issue regarding them.

18.

Under Rule 56 (g) of the rules of Civil Procedure, plaintiff is entitled to recover damages for said motion for summary judgment filed in bad faith, including attorney's fees. Plaintiffs' attorney has been compelled to defend plaintiffs against said motion, by pleadings and affidavits, and to travel from his home in Ferriday, La., to Monroe, La., and attend Court away from his home, in defense against said motion, and a reasonable fee to attorney for plaintiffs is $500 in this motion.

Wherefore plaintiffs pray that the motion for summary judgment herein filed by defendant is denied and overruled; prays further that there be judgment in favor of plaintiffs and against defendant for $500 attorney's fee for filing of said motion in bad faith; pray for all necessary orders and for general relief.

(S.) G. P. BULLIS,
Attorney for Plaintiffs.

State of Louisiana,
Parish of Concordia.

G. P. Bullis, being by me duly sworn, deposes and says that all of the allegations of fact in the foregoing answer to motion are true and correct.

(S.) G. P. BULLIS.

Sworn to and subscribed before me this 14th day of April 1942.

(S.) B. STUART,
Notary Public.

Filed in Evidence April 20, 1942.

State of Louisiana,
Parish of Concordia.

Before me, the undersigned Notary Public, duly qualified in and for said Parish and State, personally appeared Gilbert P. Bullis, a resident of Ferriday, La., who by me duly sworn, deposes and says as follows:

Affiant was employed as attorney by several land-owners in the Richland gas field, in Richland Parish, Louisiana, early in the year 1931, and continuously from that date to the present time has been actively engaged in litigation regarding the market price of natural gas in that field. Affiant has made a thorough study of the physical features of said field, including the pipe lines serving it, the means of marketing the gas, the location of wells, pipe lines, receiving stations, gasoline extraction plants, carbon black plants, etc. Affiant has also personally read and examined all of the contracts of sale of gas in said field, from the year 1927 to 1935 inclusive, and has examined or cross examined on trials of various lawsuits, almost all of the producers, and all of the leading producers in said field. Affiant has personally conducted in the various Courts, ten trials in the Trial Courts, of lawsuits in which the main issue was what was the market price of natural gas in said field, and has conducted appeals from all but one of said trials, to the Appellate Courts of the United States and the State of Louisiana. Affiant has therefore thoroughly familiarized himself with the market price of natural gas in the Richland gas field.

The clients of affiant, the land-owners in the Richland Gas Field, has never had any knowledge of the market price of gas in that field sufficient for evidence in Court, consequently affiant has been compelled to prove his cases in Court by extracting information from the various defendants in said cases and their officers and agents. It is therefore impossible for plaintiffs in this case to produce

the affidavits of persons expert in the price of gas, on this motion for summary judgment in the suit of J. M. Sartor, et als, vs. Arkansas Natural Gas Co., because all of said persons are hostile to plaintiffs.

Affiant therefore makes this affidavit personally to be filed on behalf of plaintiffs in the suit entitled J. M. Sartor, et als, vs. Arkansas Natural Gas Corporation, No. 2387 on the docket of the United States District Court for the Western District of Louisiana.

This case has been twice tried in said Court before a jury of 12 men. On the first trial, the jury brought in a verdict on April 20th, 1934, the jury brought in a verdict reading as follows:

"We, the jury, find for the plaintiffs, fixing the market price of gas at 4½¢ from 1927 to 1932 inclusive. Said price to be paid at point of delivery."

The judgment on this verdict was reversed by the Court of Appeals, a second trial had, and at this trial the District Court instructed the jury to bring in a verdict only from the period from March 20, 1930, to March 20, 1933. For this period, the jury fixed the market price at 4.45¢ per MCF.

On each of these trials, defendant introduced in evidence before the jury, substantially the same claims as are made in the present motion for instructed verdict, and in each trial the jury unanimously rejected all of these claims.

The only sales of natural gas made for gas produced in the Richland Gas Field, for delivery to the buyer within that field, during the period from the year 1927 to March 20, 1930, as far as is shown by the evidence in all of the

cases tried, including the two trials of the case at bar, are as follows:

Sale by Ouachita Natural Gas Co., et al, to Magnolia Gas Co. dated March 31, 1928, for 3¢ per MCF at 8 oz. pressure;

Sale by Palmer Corporation, et als, to Dixie Gulf Gas Co. dated May 10, 1929, at 3¢ and 4¢ per MCF at 10 oz. pressure;

Sale of Palmer Corp. to Ford, Bacon & Davis, dated Feb. 2, 1926, deliveries in 1927 to 1930, at 4.25¢ per MCF at 10 oz. pressure;

Sale by Palmer Corp, et als, to Mississippi River Fuel Corp., dated Aug. 1, 1929, for 5¢ per MCF at 8 oz. pressure;

Sale by Palmer Corp., et als, to Southern Natural Gas Corp., dated Jan. 15, 1929, for 4½¢ per MCF at 8 oz. pressure;

Sale by Palmer Corp, et als, to Arkansas Natural Gas Co., dated May 10, 1929, at 4½¢ per MCF at 8 oz. pressure;

Sale by Industrial Gas Co. and others to Memphis Natural Gas Co., dated May 24, 1928, for 5¢ at 8 oz. pressure; per MCF;

Sale by Industrial Gas Co. to Southern Gas & Fuel Co., dated Jan. 14, 1928, for 5¢ to 6¢ per MCF at 8 oz. pressure;

Sale by Ruston Drilling Co. to Natural Gas & Fuel Co., dated Aug. 5, 1927, for small quantity of drilling gas at 3¢ per MCF at 10 oz. pressure;

Sale by T. L. James to Richland Gas Co., dated Sept. 20, 1928, for 3½¢ & 4¢ per MCF at 10 oz. pressure.

A few small sales to employees, farm houses, school houses, etc., at prices far above those above stated.

Defendant, Arkansas Natural Gas Corp., paid to plaintiffs 3¢ per MCF at 2 lb. pressure, as the market price of the gas produced from plaintiffs' land during the period from 1927 to March 20, 1930. One thousand cubic feet of gas at 2 lb. pressure contains 10% more gas, and its market price is 10% greater than one thousand cubic feet of gas at 8 oz. or 10 oz. pressure. Hence every one of the above named sales was at a price higher than paid by defendant to plaintiff as market price under the lease sued on in this suit.

Since every sale of gas during the period involved, was at a higher price, and most of them at a vastly higher price, than defendant paid plaintiffs, it is utterly impossible, and frivolous, for defendant to claim, in its motion for summary judgment, that there is no genuine issue, and no substantial controversy, to dispute defendant's claim that the market price was 3¢ at 2 lb. pressure per MCF.

The affidavit of D. W. Harris attached to defendant's motion for summary judgment, contains many statements which are inadmissible in evidence because they are hearsay, and is entirely false and untrue in its statement that the clauses in the contract by which affiant bought gas in the Richland gas field were extraordinary and different from the ordinary contract of sale. The statements of said affiant as to his own personal mental processes of reasoning by which he arrived at a purchased price for gas, are impossible, irrelevant and immaterial, because personal mental process and thoughts are not competent evidence.

The affidavit of S. D. Hunter attached to motion, is irrelevant and immaterial, because none of the sales to which he testifies were made during the period of time

involved in this proceeding, namely, 1927 to March 20, 1930, and for the further reasons that the sales testified to by him were made in a monopolized market, and were trivial in amount.

The affidavit of R. H. Hargrove attached to motion shows that it is not based on the facts contained in the record in this case. Said R. H. Hargrove is Vice-President of Union Producing Co., which has been sued by these plaintiffs on the same cause of action, and by many other land-owners on the same cause of action, as in the suit at bar, consequently his opinion is not fair or unprejudiced. The statements in this affidavit that the contracts for sale of gas to pipe-lines contained unusual or onerous conditions, is an attempt on the part of affiant to testify to the contents of written documents, which [redacted] grossly unfair and legally impossible. The wisdom of the rule of evidence forbidding oral testimony regarding written contracts is shown by the fact that this affiant's testimony regarding the contents of said documents is false and untrue as will be seen from reference to the contents of sale themselves. Said affiant has testified in many cases before juries to the same effect as in his affidavit, and his testimony has been rejected by said juries. As shown hereinabove in this affidavit, said Hargrove's statement of sales is incorrect, and his statement of the weighted average price of sales by his companies is meaningless, because he does not state what is meant by the term "weighted average price". The statement of this affiant that after deducting certain expenses, the net income of the sellers under the pipe line contracts was not in excess of 3¢ per MCF is irrelevant and immaterial, because plaintiffs in this suit are entitled to the market price with no deduction for operating expenses of lessee. The statement that the obligations assumed by the sellers in the pipe line contracts were unique and extraordinary is entirely untrue.

The affidavit of E. N. Florsheim attached to said motion is irrelevant and immaterial because the sale from Richland Operating Co. to Centry Carbon Co. was not an ordinary sale of gas, but was a contract for the erection and supplying of a carbon black plant, and delivery of all gas sold was outside the Richland gas field. The sale from Franklin Oil & Gas Co. to International Gas Products, Inc., testified to by this affiant, was made on March 30th, 1930, being after the period of time involved in these proceedings. The opinion of this witness as to market price of gas is therefore worthless, and the statement of the witness that all operators in the field considered 3¢ to be the prevailing market price, is patently untrue.

The affidavit of R. C. Stokes attached to said motion is contrary to the undisputed evidence in the case at bar.

The affidavit of W. C. Feazel attached to motion, is irrelevant and immaterial because all of the sales testified to, or made by, said affiant were made after March 20, 1930.

The affidavit of C. H. McHenry as to sale to Centry Carbon Co. is irrelevant because said sale was made more than a year after March 20, 1930. The statement of affiant that the sales price of sales to pipe lines was not the market price in the field, is unexplained and inexplicable, since it is obvious that the sales price in bona fide sales is the market price, with no deduction for operating expenses.

The affidavit of R. G. Taylor attached to said motion has been shown to me incorrect, and the expense account grossly "padded" by evidence in other trials, and the books of Hope Producing Co. do not show the figures stated by this affiant.

The opinions expressed by various affiants in these affidavits are not fair and impartial opinions, but are the opinions either of officials of companies being sued on this same cause of action, or of persons doing business with the gas companies and dependent on their favor for a living, and it is grossly unfair and unjust to plaintiffs to permit such opinions to go into the record.

From affiant's long experience and study of the market price of natural gas in the Richland gas field, affiant is of the opinion that said market price was during the year 1927, more than 3¢ per MCF at 2 lb. pressure, and during the years 1928, 1929 and 1930 was more than 5¢ per MCF at 2 lb. pressure, this opinion being based on the sales made for delivery within the Richland gas field during said period.

(S.) G. P. BULLIS.

Sworn to and subscribed before me this 14th day of April, 1942.

(S.) B. STUART,
Notary Public.

Filed in Evidence April 20, 1942.

STIPULATION OF EVIDENCE FOR APPEAL TRANSCRIPT

41 (Title Omitted.)

It is stipulated and agreed that the following is a complete and accurate condensation of all evidence pertinent to this appeal, adduced on the trial of defendant's motion for summary judgment, held before His Honor, Judge Dawkins, on April 20th, 1942, all of the evidence there ad-

duced being documentary. The Clerk of Court is hereby instructed to insert this stipulation into the transcript for appeal, in lieu of said evidence, to-wit:

EVIDENCE OF DEFENDANT.

DEFENDANT EXHIBIT 1.

Affidavit of D. W. Harris, Vice-President and General Manager of defendant corporation, dated March 24th, 1942:

In the years 1927 to 1930, inclusive, defendant's predecessor corporation built a natural gas pipe line into the Richland gas field, and bought gas at the price of 4½¢ per MCF (Thousand cubic feet), delivered at said pipe line in said field. Affiant personally represented the buyer and at the time of purchase was of the opinion that gas could be freely secured in the Richland field at the wellside price of 3¢ per MCF. He was so informed by Mr. Fred Legge, President of the Magnolia Gas Co., and Charles Laskey, a lease owner in the Monroe and Richland gas fields. These statements were borne out by the fact that the companies of which affiant was General Manager had actually bought some gas in the Richland field at the well for 3¢ per MCF and associates of affiant who were familiar with the field likewise informed affiant that gas could be secured at the well in the field at that price.

The reason why affiant paid 4½¢ per MCF was that, in his opinion, the unusual obligations imposed on the sellers in the pipe line contracts were worth more than the difference between the said price of 4½¢ and the base price of 3¢ per MCF for gas at the well. This opinion was borne out by experience:

Under the ordinary wellside gas purchase contract, the seller is obligated only to deliver what gas his well or

wells will produce; that is, the seller has the gas, he sells it to the buyer as it comes from the well, it is metered at the well, and the seller has no further responsibility in the matter. In these pipe line contracts, however, the reverse is true, the buyer having only a single obligation, which was to take such gas as it might need and pay for it, whereas the sellers were obligated to install gathering lines, transport the gas from the well to the pipe line, be ready at all times to deliver to the buyer such quantities of gas as the buyer might need, the buyer being given the option to fix quantities with certain minimum and maximum restrictions which might be increased at the option of the buyer from time to time. An important feature of these contracts was the obligation of the sellers to supply gas from the Monroe field in the event the Richland field became exhausted. Under the contracts, the buyer obtained without any expense to itself other than that involved in paying for the gas, an adequate reserve of gas for its future needs. Without that reserve, the buyer would have been compelled to either purchase sufficient proven leases and drill a sufficient number of wells on these leases and maintain those leases in effect or to secure contracts from the owner of a sufficient number of wells already drilled to justify the building of a pipe line.

In making this purchase of gas, affiant had in mind definitely a basic wellside price of 3¢ per MCF, and preferred to buy gas for his pipe line at a higher price, rather than buy it at 3¢ without the above assurance given by the contracts under which he bought.

The buyer and seller in this sale were not financially interested in each other, and the contracts were made at arm's length through negotiations which extended over a period of months.

During the period beginning with the year 1927 and ending March 19th, 1930, it is affiant's opinion that there was a well established price for gas at the wellside both in the Richland Field and the Monroe Field of 3¢ per MCF at two pounds above atmospheric pressure.

(It is admitted in the record, by both parties, that affiant D. W. Harris is an expert in the gas business.)

(Plaintiff objected to the admission of the foregoing affidavit on the grounds that it contained hearsay, and that the affidavit attempts to give oral testimony regarding contents of written contracts, when the contracts themselves are the best evidence.)

(The Court sustained the objection to hearsay and otherwise overruled the objection.)

43 DEFENDANT EXHIBIT 2.

Affidavit of S. D. Hunter, dated March 17th, 1942:

I have been in the oil and gas business since 1916. I began operations in the Richland gas field in the latter part of 1926. I acquired leases and drilled wells under a considerable acreage, in both the Monroe and Richland fields, until we disposed of our major properties in both fields about 12 years ago, although I still have an interest in some producing wells in the Monroe field. As President and principal stockholder in the Ouachita Natural Gas Company, I made a sales contract with the Magnolia Gas Company dated March 30th, 1928, for the sale of gas in the Richland field at 3¢ per MCF, and was delivering a large amount of gas thereunder when we sold our properties. I have since operated several smaller properties in the Richland field. We were disappointed in the price received for gas under the Century Carbon Company contract, as we had anticipated that the price of carbon black would go up, but I believe we got what the gas was worth at the well in the three cent contracts with United Gas Public Service Company, which was the prevailing market price or value of the gas at the well in that field.

(The witness then made affidavit regarding several sales of gas made by him in the year 1931 and thereafter, which, on objection by plaintiff, was ruled out by the District Court, the Court ruling that only sales during the period involved in this suit, namely, 1927 to March 20th, 1930, or within six months before or after said period, would be admitted in evidence. The counsel for plaintiff objected to the admission in evidence of the opinion expressed by affiant in his affidavit on the ground that he was not shown to be an expert in the matter of market price in the Richland gas field from 1927 to 1930, which objection was overruled by the Court saying: "I personally think that Mr. Hunter is one of the best informed men in the field, and I think his trading qualities are such that if he could get more he would get it.")

44 DEFENDANT EXHIBIT 3.

Contract of sale, dated March 31, 1928, between Ouachita Natural Gas Company, Inc., and others, as seller, and Magnolia Gas Co., as buyer, stipulating sale of a maximum of 16 billion cubic feet, and a minimum of 6 million cubic feet, annually, of natural gas delivered at measuring stations in the Monroe and Richland gas fields, at a price of 4¢ in the Monroe field, and 3¢ in the Richland field, per MCF, at 8 ounce pressure, provided said quantities can be produced by seller from its stipulated leases, seller being obligated to furnish only such gas, to above quantities, as can be procured with reasonable diligence from its specified leases.

DEFENDANT EXHIBIT 4.

Affidavit of R. H. Hargrove, dated March 31st, 1942:

Affiant is Vice-President of United Gas Pipe Line Company, and has been engaged in the gas business as an

executive officer of that company and its predecessors since 1928. Said companies have owned leases and produced gas in the Richland gas field, and affiant is particularly familiar with the various so-called pipe line contracts which were entered into by producers of gas in the Monroe and Richland fields as sellers and Arkansas-Louisiana Pipeline Company, Dixie Gulf Gas Company, Mississippi River Fuel Company, Southern Natural Gas Corporation and Memphis Natural Gas Company, as buyers; and is fully informed as to the market at the well which was maintained by affiant's companies for gas produced from the Richland gas field during the years 1928, 1929 and 1930.

On the basis of this knowledge and information, in affiant's opinion, the market price of gas at the well in the Richland field during the period from 1927 to March 19th, 1930, was 3¢ per MCF. This conclusion is based upon the following established facts:

(1) Various sales of gas in the Richland gas field by independent well owners at 3¢ or less, among them being T. L. James, Ruston Drilling Company, Richland Operating Company, Franklin Oil & Gas Company, W. C. Feazel, Sam D. Hunter, and Pelican Gas Company. These were experienced operators, and would not have sold their gas for less than what it was worth.

(2) The great majority of leases in the Richland field stipulate that the lessor's royalty interest shall be paid at the rate of 3¢ per MCF, and of the leases stipulating royalty at market price, probably 90% were paid on the basis of 3¢ per MCF, including a lease to the State of Louisiana. In almost every case where a settlement of royalty was made on basis of 4¢, such settlement was a compromise of dispute as to whether a lease had been properly developed, whether the lessor was entitled to a royalty on gasoline recovered from the gas, and whether the lessee should

pay the whole severance tax or the lessor should pay his proportion of it. The State of Louisiana was among the lessors who received and accepted as correct royalty settlements for gas produced on the basis of 3¢ per MCF.

(3) A substantial portion of the gas produced in Richland field was sold to carbon black plants and in almost every case, the net return to the seller was less than 3¢, sometimes very much less.

(4) The Monroe gas field was brought in long before the Richland field, and is of much larger extent and importance, and in that field, there was established and generally recognized a price of 3¢ per MCF for gas at the well. Much of the gas from the Monroe and Richland fields moved to a common market, and the ability of operators in the Richland field to supplement their gas supply from the Monroe field was one of the principal features in obtaining a satisfactory price for the Richland gas.

(5) Companies with which affiant was connected produced more than half of the gas which was marketed in the Richland field, and sold that gas to the best possible advantage. The weighted average price of their sales during the period beginning in the year 1928 (no sales having been made by such companies prior to 1928), and ending March 31, 1930, was 3.495¢ per MCF and when there is deducted from this weighted average price a reasonable allowance for the various services which the seller was required to render and obligations which it was compelled to assume in order to make a market for the gas, the net price actually received for the gas at the well by affiant's company did not exceed 3¢ per MCF.

(6) While prices higher than 3¢ per MCF were in most cases agreed to be paid under the so-called pipe line contracts which have been introduced in this case, the ob-

ligations of the sellers under these contracts was so onerous that after deducting from the gross price stipulated in the contracts a reasonable allowance for gathering and delivering the gas, acquiring and maintaining large reserves which would be done only by obtaining and keeping in effect leases on several hundred thousand acres of potential and proven gas producing lands, continuously drilling wells for the augmentation of the supply of gas immediately available, and installing and maintaining at all times sufficient machinery and equipment for the removal of the gasoline content from such varying quantities of gas as might be required from time to time by the buyers, the net price realized by the sellers at the well for the gas which was delivered was not in excess of 3¢ per MCF.

Ordinarily the owner of a gas well who sells his gas at the wellhead has no obligation except to deliver the gas he has into a connection provided by the buyer for as long a time as the gas supply holds out. These pipe line contracts were something altogether different; in fact, they were unique in affiant's experience in respect to the obligations imposed on the sellers. As illustrations of the burdensome and expensive character of these obligations three of the sellers to the Mississippi River Fuel Co. felt obligated to acquire and hold leases on 227,339 acres of land, in order to be sure of supplying approximately 40% of the total amount of gas agreed to be sold to that buyer. To acquire that much acreage cost the sellers a great deal of money, and the expenses did not stop with the acquisition. Wells had to be drilled or rentals paid to keep these leases alive, and it frequently happened that the primary term of the lease expired and it was necessary to obtain new leases from the same owners, which is quite an expensive undertaking.

Under the contract between the Palmer Corp. & Industrial Gas Co., as sellers, and Arkansas-Louisiana Pipe Line Co., as buyers, for its Shreveport line, the amounts of gas

taken by the buyer each day varied from 2,211,000 cubic feet to 20,835,000 cubic feet, and on its El Dorado line, varied from a low of 5,755,000 cubic feet to a high of 50,755,000 cubic feet daily. These variations mean that the seller had to maintain facilities for supplying the maximum amount at any time demanded by the buyer, yet might be able to deliver only the minimum.

A striking illustration of the real value of the sellers' obligations under these pipe line contracts is supplied by considering the case of the Arkansas Louisiana Gas Co., which built a pipe line into the Richland field and preferred to buy gas under these pipe line contracts at the prices therein stipulated rather than pay 3¢ per MCF for it at the well from the various producers who at that time were willing to sell on that basis. The wellside price of 3¢ in the Richland field was in line with the wellside price in the Monroe field at that time.

Affiant further says that it is his considered judgment that during the period beginning with the year 1927 and ending March 19, 1930, there was a market for gas at the well in the Richland field, and the market price for that gas at the well was 3¢ per MCF.

(Plaintiff objected to this affidavit as follows: To such portions as refer to sales made after March 20th, 1930, which are the sales by Franklin Oil & Gas Co., W. C. Feazel, S. D. Hunter and Pelican Gas Co.)

(Plaintiff objects to that portion of his affidavit regarding leases, on the ground that the lease is a contract for the sale of the right to go on land and drill for oil or gas and is not a sale of oil or gas, and at the time the contract is made, neither party owns or knows that they will ever own any gas, and in a great majority of cases neither party ever later owns any gas; hence this contract is irrelevant and immaterial to the price of gas many years later.)

(Plaintiff objects for the further reason that land-owners in leasing their property have two options: one, to stipulate a royalty at a fixed price, whereby they eliminate any uncertainty as to the amount of the royalty they shall be paid in the event there is a decrease in the price of gas; the second option of land-owners being that they can stipulate to receive royalty at market price, taking the risk of the market price being lower than 3¢ in consideration of the advantage of receiving more if the price exceeds 3¢. Hence the fact that certain land-owners elected the certainty of 3¢ rather than the uncertainty of market price for their royalty, is immaterial and irrelevant and the evidence is grossly unfair to plaintiff, who elected to receive market price.)

(Plaintiff further objects to the affidavit because it attempts to give oral testimony regarding the contents of written documents, namely, leases and contracts to sell, the written documents being the best evidence and readily accessible.)

(Plaintiff objects to evidence regarding Monroe gas field as irrelevant and immaterial, the Court having limited evidence in this suit to the Richland field.)

(Plaintiff objects to affidavit regarding "weighted average price of sales" because the affidavit does not state what is meant by this term, and a price quoted by this highly prejudiced witness is not admissible in evidence.)

(Plaintiff objected to reduction from pipe line prices of allowances for various services, because it is the essence of the lease sued on in this suit that lessee will pay all expenses of producing and marketing the gas, and the 1/8th royalty is stipulated in the lease to be computed on the sales price of the gas, with no deduction for expenses.)

(Plaintiff objects to that portion of the affidavit regarding deductions from the price at which gas is sold, because of alleged onerous conditions in the sales, as irrelevant and immaterial, because there is no showing that these are not the customary and usual stipulations in sales in the Richland field.)

(Plaintiff objects to testimony in this affidavit regarding ordinary sales of gas at the wellhead because there is no showing that any such sales existed in the Richland gas field.)

On these objections the District Court ruled as follows:

"The evidence represented by or reported by the affidavit will be restricted to the period of six months before and six months after the period covered in this lawsuit. With respect to leases, the Court of Appeals has held that these leases, together with all other evidence throwing light on the question of market price, are admissible, and in the judgment of this Court, any lease of this nature made in this field during this period would be substantial evidence of the value of the gas at the well. This affidavit, for the first time, according to the best recollection of the Court, brings into consideration the element affecting the admissibility of evidence as to the price of gas in the Monroe field, which did not appear in the other cases.

"What has just been said has reference to paragraph No. 4 of the affidavit wherein it recites:

" 'The Monroe field, which was always of much larger extent and importance than the Richland field and which is still an extremely important source of gas production whereas the Richland Field has been substantially abandoned, was brought in long before the Richland Field; and there was established and generally recognized in the

Monroe Field the price of three cents per MCF for gas at the well. *Much of the gas from the two fields moved to a common market; in fact, the ability of the operators in the Richland field to supplement production by adding to it gas from the Monroe field was one of the principal features enabling a satisfactory price to be obtained for the Richland gas and of thus permitting the same wellhead price to be established in the Richland Field as in the Monroe Field.*' (Italics made by this Court.)

"I do not recall heretofore in the trial of any of these cases that this point to the effect that the price in the Richland field was affected in this manner by the price in the Monroe field, ever came before me. The affidavit on this score, therefore, will be permitted to stand as it appears for such effect as this Court, and the Appellate Court may give it. I think otherwise the objections were covered by my previous rulings heretofore made, and will be overruled."

(On motion, the Court Ordered this objection and ruling to be made general to all similar testimony.)

50 DEFENDANT EXHIBIT 5.

Testimony of R. H. Hargrove, dated April 10th, 1942:

The price actually paid for gas delivered under the contracts dated May 10th, 1929, by United Carbon Company and Industrial Gas Company, as sellers, and Dixie Gulf Gas Company as buyer, was 3¢ per MCF up to November 30th, 1929, and 4¢ per MCF thereafter.

The capital stock of Mississippi River Fuel Company was owned either by the various producers of gas which sold to that company under the pipe line contracts, or by companies which owned and controlled said producers.

No delivery of gas was made under this contract until January 1st, 1930.

The contract between the Industrial Gas Company and the Southern Gas & Fuel Company of date January 14th, 1928, was a contract between corporations owned by the same people and in September, 1928, which was prior to the time that any deliveries from the Richland field were made under this contract, the contract price was reduced to 3½¢ per MCF, and this price continued in effect until December 31, 1934.

No gas was delivered from the Richland field under the contract dated May 24th, 1928, between the Industrial Gas Company as seller and Memphis Natural Gas Company as buyer. All gas was delivered from the Monroe field.

DEFENDANT EXHIBIT 6.

Affidavit of E. N. Florsheim, dated March 24th, 1942:

I am now and have been since 1916 engaged in the natural gas business. I have had considerable experience in both the Monroe and Richland fields. I have operated gas properties in both and have purchased and sold gas in both fields, which are about five miles apart. The Monroe field has been in operation for ten years before the Richland field was discovered. The Monroe field at that time had a well recognized and established price of 3¢ per MCF for gas at the well, and this was considered the price in the newer Richland field when it started. In my opinion, and the opinion of all operators in the Richland field, the market price or value of gas at the well in the Richland field was never in excess of 3¢.

I and my associates, doing business as Richland Operating Company, sold to Century Carbon Company, by contract dated July 27th, 1929, twenty million cubic feet of gas per day from the Richland field, at price of 3¢ for

the first six months; thereafter the price was based on the price of carbon black, which went down instead of up as anticipated, so that we received the minimum price of 1½¢ per MCF for all we thereafter delivered. From 1929 to 1936 we sold 7,932,829 MCF of gas under this contract, of which 168,209 MCF was sold in 1929, and 3,205,087 in 1930.

I and my associates, operating as Franklin Oil & Gas Company, sold to International Gas Products Company, Inc., by contract dated March 3rd, 1930, natural gas from the Richland field at price of 2½¢ per MCF at the well, the contract requiring buyer to take a minimum of two million feet per day. Under this contract, we delivered 67,043 MCF in 1930, 55,206 MCF in 1931 and 2,487 MCF in 1933, a total of 124,736 MCF.

These contracts were believed by us to be advantageous and profitable because of the large minimum pull agreed to be taken from our wells, although the price was lower than the 3¢ per MCF at which other sales were made and which was generally considered to be the prevailing price at the well in the field.

(Plaintiff objected to admission of this affidavit, because it gives the opinion of affiant, and he is not shown to be an expert on the subject for which he gives opinions, and plaintiff has had no opportunity to cross examine affiant as to his qualifications and there is no Court ruling permitting his opinion evidence; also because affiant testifies to the contents of written documents, and the documents themselves are the best evidence.)

(The District Court overruled this objection. Upon motion, the Court Ordered the foregoing objection and ruling to be made general to all similar evidence for defendant in this case.)

52 DEFENDANT EXHIBIT 7.

Affidavit of R. C. Stokes, dated March 24, 1942:

Affiant is Chief Clerk of Union Producing Co. at its Monroe, La., office, and in such capacity, has charge of its accounting department and is custodian of its accounting records and the accounting records of its various predecessor companies with relation to the production, purchase and sale of gas produced from the Richland and Monroe fields. These predecessor companies were: United Gas Public Service Co., Louisiana Gas & Fuel Co., Palmer Corporation of La., Industrial Gas Co., Moody-Seagraves Gas Co., State Line Oil & Gas Co., Richland Production Co., Ouachita Natural Gas Co., and Northern Louisiana Natural Gas Co.

The aforesaid records show that after deducting from the gross price realized by these various corporations for gas produced from the Richland gas field during the period 1928-1930 inclusive, the actual average unit cost of gathering and delivering the aforesaid gas, the net realization of those corporations from the sale of gas during the aforesaid period did not exceed 3¢ per MCF.

(Plaintiff objected to the admission of this affidavit, on the grounds that it was oral testimony regarding contents of written records, and the records themselves were the best evidence, and plaintiff is entitled to examine the records and cross examine the witness from the records themselves, and the further reason that the evidence regarding "Actual average unit cost" is irrelevant and immaterial, because the Supreme Court of Louisiana has decided that under leases such as here sued on, the market price intended by the parties was the price in the field where produced, and also the lease stipulates that all expenses of producing, delivering and marketing the gas shall be paid by lessee as consideration for the 7/8 of

everything produced, received by lessee; and that the royalty of 1/8th is net to the lessor without any deductions for expenses of lessee.)

(The District Court overruled this objection, and Ordered the objection and ruling made general to all similar testimony.)

53 DEFENDANT EXHIBIT 8.

Affidavit of W. C. Feazel, dated March 18, 1942:

I have engaged for the past 25 years in the oil and gas business, buying and selling leases and oil and gas lands, drilling wells and producing and selling oil and gas, in several different fields. I had been operating for a number of years in the Monroe gas field, when the Richland field was brought in in 1926. I acquired a great many leases in Richland, some of which I assigned to others, some I drilled and operated myself. There had been for some years a well recognized and established price in the Monroe field of 3¢ per MCF for gas at the well, and most of the leases I took in Richland called for royalty fixed at that price. In my opinion, the market price or value of the gas at the well in the Richland field never exceeded 3¢. I sold gas from a lease in which I was interested with Drs. Bendel & Brown, to International Gas Products, Inc., under contract dated April 18, 1930, for 2½¢ per MCF, the quantity sold being a total of 2,875,690 MCF between 1930 and 1934 inclusive, of which 837,728 MCF was sold in 1930.

I was familiar with the market for gas at the well in the Richland field maintained by the standing offer of United Gas Public Service Co. to buy gas from anyone who had it, for 3¢ per MCF at the well, on a basis of acreage production pro rata with the purchaser's other pro-

ducing properties in the field. I made the 2½¢ sale above, in preference to this offer, because it guaranteed a minimum purchase of three million cubic feet per day.

At another time I had a large quantity of gas available and could have sold it under that market of 3¢ at the well, but sold my leases and wells instead, as I considered the offer I had for them advantageous. I was never offered more than three cents for my gas delivered in the Richland field at the well, by anyone.

I also made a contract with Southern Natural Gas Corporation to sell and deliver 4% of the requirements of their pipe line, with its option to increase this to 7%, for gas from 3800 acres I had under lease in the Richland field, at 4½¢ per MCF, under a 20 year contract with the price increasing in later years. Upon an estimate made by an engineer, it would have cost me about 2¢ per MCF to gather and deliver this gas to the pipe line, and I would have been put to considerable expense in drilling additional wells, paying delay rentals and bonuses for renewals of undeveloped leases, in order to maintain the reserves committed to the contract. I would not have netted 3¢ on the contract, certainly not in the earlier years. It did not look like a profitable venture, so I sold my properties and contract.

55 DEFENDANT EXHIBIT 9.

Affidavit of C. H. McHenry, dated March 19, 1942:

I am now and have been since 1916, engaged in the gas business in the Monroe and Richland gas fields and elsewhere. I am a practicing lawyer in Monroe, La., and an executive officer of United Carbon Co., which operates gas properties in the above two fields, and others. I was connected with other companies engaged in gas production in the earlier days of the Monroe field, and own, in-

dividually, interests in gas leases and producing properties in the two fields. I have participated in negotiations for the purchase and sale of gas and am familiar with the terms of many contracts for sale of gas in both fields. The Monroe field had been in operation for ten years when the Richland field, just a few miles away, was discovered. In the Monroe field there was a well-recognized and established price for gas of 3¢ per MCF delivered at the well, and the prevailing market price at the well in the Richland field has never, in my opinion, been in excess of 3¢.

The United Carbon Co. sold and delivered gas produced in the Richland field under contract with Century Carbon Co. dated Aug. 26, 1931, specifying a minimum delivery of three million cubic feet per day, at a price fixed at 1½¢ per MCF when the market price of carbon black was 4¢ per pound or less, and an increased, graduated price for gas when the market price of carbon black was greater than 4¢, up to a maximum of 4½¢ per MCF when carbon black sold for 10¢ per pound or more. Under this contract 8,640,839 MCF of gas was sold, of which 349,097 MCF was in 1931. All of said gas was paid for at the minimum price of 1½¢ per MCF.

United Carbon Co. also sold Richland field gas under the long term pipe line contracts with the Mississippi River Fuel Co., Southern Natural Gas Corp., Dixie-Gulf Gas Co. and Arkansas-Louisiana Pipeline Co., identical, except as to quantities sold, with those of the other producer-vendors: Industrial Gas Co., Palmer Corporation of La., Hope Producing Co. and Southern Carbon Co., in which the price of the gas delivered at the receiving stations of these pipe lines was higher than 3¢, but such delivered pipe line prices are not representative of the market price or value of the gas at the well, because of the many onerous obligations imposed on and expensive operations required of the sellers over and above and in addition to the production and delivery of gas at the mouth of the well. Only after deduction of the expenses of

gathering the gas from wells where produced and delivering it at the pipe lines, a distance away; and of the large expense of maintaining the reserves of gas necessary to comply with the obligations of the vendor to deliver large quantities of gas over long terms of years and meet peak load requirements, could these pipe line prices be in any wise properly compared with the market price or value of the gas in the field.

(Plaintiff specially objected to the above evidence regarding contract with Century Carbon Co., because in that sale the price of gas was a sliding scale based on the market price of carbon black, hence the price is too vague and uncertain and dependent on factors not involved in the question of gas itself, hence has no probative value as to the market price of gas in the field.)

(The District Court overruled this objection, as going to the effect rather than the admissibility of the evidence.)

57 DEFENDANT EXHIBIT 10.

Affidavit of R. G. Taylor, dated March 18, 1942:

Affiant is Assistant Treasurer of Hope Producing Co., which operated gas producing properties in the Richland and Monroe gas fields for a number of years. The books and records of said Hope Producing Co. have been kept under affiant's general supervision for many years and affiant is entirely familiar with the prices received by Hope Producing Co. for the gas it produced in the Richland gas field and with the unit cost of getting gas from the wellhead to the point of delivery to the pipe lines in the Richland field. After deducting from the price paid to the Hope Producing Co. for the gas, the unit cost of gathering and delivering it to the pipe lines, the average

sale price of such gas up to July, 1936, was slightly less than 3¢ per MCF.

On the basis of the experience of the Hope Producing Co., the net value of gas at the well in the Richland field did not at any time prior to the year 1931 exceed 3¢ per MCF calculated at 2 lb. above atmospheric pressure, and was in fact slightly less than 3¢.

58 DEFENDANT EXHIBIT 11.

Pamphlet entitled "Natural Gas in 1928", issued by the Bureau of Mines, United States Department of Commerce, giving voluminous and detailed statistics regarding natural gas in the United States, including a table showing the estimated value at the wells of gas produced in each State. This value, for the State of Louisiana, is stated to be 3¢ per MCF in 1927 and 3.3¢ in 1928.

(Plaintiff objected to this exhibit on the ground that it was an entirely unauthenticated document; that plaintiff was given no opportunity to cross examine its author; that it showed an estimated value at the well, whereas in this case the record shows all actual sales of gas made in the Richland field, hence no estimate is admissible; that the lease sued on stipulates that plaintiffs will receive the price of gas, not its value; and that this document purports to show a price for the whole State of Louisiana while the evidence in this case is limited to the Richland field.)

(The District Court overruled this objection, for the reason that it is a government publication, and while not conclusive, has some value in the event there is no market price evidence.)

59 DEFENDANT EXHIBIT 12.

Letter from Ruston Drilling Co., Inc., to Natural Gas & Fuel Co., dated August 5, 1927, granting Natural Gas & Fuel Co. permission to take gas from two wells of Ruston Drilling Co. in the Richland gas field for six months at price of 3¢ per MCF at 8 ounce pressure, at the wells.

Also affidavit of T. J. Heard, Secretary of said buyer, to the effect that Exhibit 12 is a true and correct copy of a letter contract for the purchase of gas in the Richland gas field by the Natural Gas & Fuel Co. and that under this agreement said buyer took 277,923 MCF of gas in January and February, 1928.

DEFENDANT EXHIBIT 13.

Contract dated March 3, 1930, in which Franklin Oil & Gas Co., Inc., sells to International Gas Products, Inc., all of the gas produced from a well owned by seller in the Richland gas field, to be taken with minimum of two million feet per day, and maximum of twenty million feet per day, to be used in manufacture of carbon black, for the price at the well of 2½¢ per MCF at 10 ounce pressure.

DEFENDANT EXHIBIT 14.

Lease contract attached to plaintiff's petition and sued on in this suit:

This is an oil and gas lease, dated March 7th, 1927, between E. A. Sartor and F. B. Sartor as lessors, and Natural Gas & Fuel Corp. as lessee, in the usual form for mineral leases, leasing 500.5 acres of land in Richland Parish, Lou-

isiana, for a consideration of $17,500.00 cash. The lease stipulates a royalty on all natural gas produced as follows:

"In consideration of the premises, the said lessee covenants and agrees: * * *

To pay to the lessee $200.00 per year for each well producing gas only, until such time as the gas shall be utilized or sold off the premises, and at that time the royalty above named shall cease, and thereafter the grantor shall be paid one-eighth of the value of such gas, calculated at the rate of market price and not less than 3¢ per thousand cubic feet corrected to two pounds above atmospheric pressure, and lessor to have gas free of cost from such well for all stoves and all inside lights in the principal dwelling house on said land during the same time, by making his own connections with the wells, at his own risk and expense."

60 DEFENDANT EXHIBIT 15.

PLAINTIFF EXHIBIT 3.

Stipulation of facts agreed to be correct, filed jointly by plaintiff and defendant into the records of this suit at a previous trial, on April 18th, 1934:

It is agreed that the following written contracts were made, for sale of natural gas produced in the Richland gas field, for delivery within that field, during the period involved in this suit:

Contract No. 1:

On May 10th, 1929, the Industrial Gas Company entered into a contract for the sale of gas to the Arkansas-Louisi-

ana Pipeline Company, the essential terms, conditions and stipulations of which are as follows:

The seller declares that it is the owner of a large number of gas producing properties, including lands, leases and gas purchasing contracts in the Monroe gas field and in the Richland gas field. The contract likewise recites the ownership by the buyer of certain pipe lines, one known as the Crusader Pipe Line and the other as the La-Tex Pipe Line, which are used by it for the transportation of gas from the Monroe and Richland gas fields to the town boundaries of various towns in the States of Texas, Louisiana and Arkansas; and declares that the purpose of the buyer in entering into the contract is to increase its own supply of gas and provide a future supply of gas for the purposes of distribution and sale.

The quantity of gas to be delivered each year under the contract is specified to be not less than 5½ billion cubic feet per year and not more than 11 billion cubic feet per year; the buyer being given the option of determining the amount of gas to be delivered within these limits. The buyer is likewise given the right on six months notice to increase the minimum amount which it is required to take annually and the maximum amount which seller may be required to deliver; provided that the maximum amount shall always be twice the minimum and further provided that not more than 30 billion cubic feet may be required to be delivered by the seller in any one year.

Two places are stipulated for delivery, both in Union Parish, Louisiana, one being near the NW corner of Section 6, Township 21 North, Range 4 East, and one at a point where the 16" pipe line intersects with the West line of the NW¼ of Section 7, Township 20 North, Range 4 East, Union Parish, Louisiana.

The seller is obligated to warrant title to all gas delivered by it and to indemnify the buyer from all suits, damages and expenses arising from adverse claims, including claims of the State of Louisiana for taxes, if any.

Seller further agrees to use due diligence in drilling and operating its gas properties and keeping its gathering system and pipe lines in good repair so as to enable it to deliver such amounts of gas as buyer may require to be delivered under the contract.

The term of the contract is for ten years, beginning May 10th, 1929.

The prices at which the gas delivered is to be paid for are as follows:

(a) For 45% of the monthly deliveries from May 10th, 1929, through December 1st, 1930—3¢;

(b) For the next three years—4¢;

For the next three years—5¢;

(c) For 55% of the deliveries from May 10th, 1929, through August 31st, 1932—4¢;

From September 1st, 1932, through December 31st, 1935—5¢;

For the year 1936—6¢;

(d) For the period from January 1st, 1937, to the termination of the contract, May 9th, 1939—6¢ on all gas delivered.

Contract No. 2:

Dated May 10th, 1929, between Industrial Gas Company and Arkansas Louisiana Pipeline Company.

Quantity: Minimum of 375 million cu. ft. per year;

Maximum of 750 million cu. ft. per year;

with right on the part of the buyer to increase the maximum to 1875 million, in which event the minimum will automatically be increased to 937,500,000 cu. ft.

In event of the inability of the seller after two years to deliver the required minima quantities of gas as called for by the buyer, the buyer is given the option to cancel the contract.

Point of Delivery: Two points of delivery, one in the Monroe gas field in Section 31, Township 20 North, Range 4 East, Ouachita Parish, Louisiana; and one in the Richland gas field at a point East of Boeuff River in Section 17, Township 16, Range 6.

Price: For the first three years four months—4½¢;

For the next three years four months—5½¢;

For the remainder of the contract—6½¢.

Term of contract being ten years beginning December 1st, 1929.

Contract No. 3:

Dated May 10th, 1929, between the Palmer Corporation of Louisiana and the Arkansas Louisiana Pipeline Company.

Quantity: 50% of all gas purchased by buyer in the Monroe and Richland gas fields for transportation through its pipeline to or through the Shreveport area, with certain specified exceptions; and subject to a minimum amount of 1½ million cu. ft. per year and a maximum of 3 billion cu. ft. per year. The minimum may be increased at the option of the buyer to any amount not to exceed 7½ billion cu. ft. and the maximum will automatically increase to an amount not to exceed 15 billion cubic feet per year.

Point of Delivery: Two points of delivery, one in the Monroe gas field in Section 31, Township 20 North, Range 4 East, Ouachita Parish, Louisiana; and one in the Richland gas field at a point East of Boueff River in Section 17, Township 16, Range 6.

Price: First three years four months—4½¢;

Next three years four months—5½¢;

Remainder of the contract—6½¢.

Term of contract being ten years beginning December 1st, 1929.

Contract No. 4:

Dated May 10th, 1929, between United Carbon Company of Louisiana and Dixie Gulf Gas Company.

Quantity: Minimum of $1,620,000,000 cu. ft.;

Maximum of 3,240,000,000 cu. ft. per year.

This contract requires the seller to obtain gas for delivery from lands, leases and gas purchase contracts owned

by it and its subsidiary companies in the Parishes of Union, Morehouse, Ouachita and Richland.

Point of Delivery: Two points of delivery, one in the Monroe gas field in Section 31, Township 20 North, Range 4 East, Ouachita Parish, Louisiana; and one in the Richland gas field at a point East of Boeuff River in Section 17, Township 16, Range 6.

Price: The contract provides for the fixing of prices for gas from time to time by agreement between the parties or by arbitration in event of disagreement, with the following limitations:

Minimum of 3¢ per thousand cu. ft. until November 30th, 1929;

Next five years—4¢; and thereafter 3¢.

Maximum to be not more than 5¢ per thousand cu. ft. up to October 31st, 1932;

For the next two years up to October 30th, 1934—6¢; and

During the remainder of the contract—7.6¢.

Term of contract being ten years.

Contract No. 5:

Dated May 10th, 1929, between Industrial Gas Company and Dixie Gulf Gas Company.

Quantity: 14% of all gas which the buyer may take or use from the Monroe and Richland gas fields, subject to

a minimum of 1,890,000,000 cu. ft. per year and a maximum of 3,780,000,000 cu. ft. per year.

Point of Delivery: Two points of delivery, one in the Monroe gas field in Section 31, Township 20 North, Range 4 East, Ouachita Parish, Louisiana; and one in the Richland gas field at a point East of Boeuff River in Section 17, Township 16, Range 6.

Price: Fixing of prices by agreement between the parties or by arbitration in event of disagreement, with the following limitations:

Minimum of 3¢ per thousand cu. ft. up to November 30th, 1929;

Next five years—4¢; and

Thereafter 5¢.

Maximum not more than 5¢ per thousand cu. ft. up to October 31st, 1932;

Next two years—6¢;

Thereafter—7.6¢.

Term of contract ten years from May 10th, 1929.

Contract No. 6:

Dated May 10th, 1929, between Industrial Gas Company and Dixie Gulf Gas Company.

Quantity: 14% of all gas which the buyer may take or use from the Monroe and Richland gas fields. No minimum appears to be stipulated; but the maximum

amount which the seller may be required to deliver is declared to be 2,310,000,000 cu. ft. per year.

Point of Delivery: Two points of delivery, one in the Monroe gas field in Section 31, Township 20 North, Range 4 East, Ouachita Parish, Louisiana; and one in the Richland gas field at a point East of Boeuff River in Section 17, Township 16, Range 6.

Prices: Fixing of prices by agreement between the parties or by arbitration in event of disagreement, with the following limitations:

Minimum of 3¢ per thousand cu. ft. up to November 30th, 1929;

Thereafter—4¢.

Maximum not more than 5¢ per thousand cu. ft. up to October 31st, 1932;

Thereafter—6¢ during life of the contract.

Contract No. 13:

Sale dated March 31, 1928, by Ouachita Natural Gas Co. to Magnolia Gas Co., of minimum of 6,000,000 MCF and maximum of 16,000,000 MCF per year, delivered at pipe line gathering station. Price: 3¢ per MCF.

Contract No. 14:

Sale dated March 3, 1930, by Franklin Oil & Gas Co. to International Gas Products, Inc., of all gas produced from a well of seller, and any other wells drilled on a certain lease of 20 acres, sold at the well for price of 2½¢ per MCF.

Contract No. 15:

Sale dated April 18, 1930, by Feazel, Bender & Brown to International Gas Products, Inc., of all gas produced from well of sellers, at price of 2½¢ per MCF at well.

Contract No. 16:

Sale dated July 29, 1929, by Richland Operating Co. to Century Carbon Co. at price of gas based on price of carbon black, being graduated from 1½¢ per MCF when carbon black sells for 4¢ per pound or less, to 3¢ when carbon black sells for 7¢ per pound.

Stipulations Regarding Sales:

1.

The average price per pound of carbon black was 6¢ in 1929 and 5-1/6¢ in 1930.

2.

The average cost of transporting gas from the wells in the Richland gas field to the points of delivery referred to in the various pipe line contracts, was 3/10 of 1¢ per MCF.

4.

Contract No. 3 covers 50% of the gas purchased by the Arkansas-Louisiana Pipeline Co. for transportation thru its pipe line to or thru the Shreveport area, and the remaining 50% of said gas purchased by said buyer was purchased from Southern Carbon Co., Interstate Natural Gas Co., Hope Producing Co., United Carbon Co., and Indus-

trial Gas Co., under contracts identical with Contract No. 3.

5.

Contract No. 4 covers 12% of the gas purchased by the Dixie-Gulf Gas Co. and the remaining 88% of said gas purchased by said buyer was purchased from Southern Carbon Co., Interstate Natural Gas Co., Hope Producing Co., United Carbon Co., Industrial Gas Co., and Moody-Seagraves Co., under contracts identical with contract No. 4.

6.

Contract No. 7 covers 10% of the gas purchased by the Mississippi River Fuel Company, and the remaining 90% of said gas purchased by said buyer was purchased from Southern Carbon Co., Interstate Natural Gas Co., Hope Producing Co., United Carbon Co., Industrial Gas Co., and Mood-Seagraves Co., under contracts identical with contract No. 7.

7.

Contract No. 8 covers 16% of the gas purchased by the Southern Natural Gas Corporation, and the remaining 84% of said gas purchased by said buyer was purchased from Southern Carbon Co., Interstate Natural Gas Co., Hope Producing Co., United Carbon Co., and Industrial Gas Co., under contracts identical with contract No. 8.

8.

Pipe lines lead from the Richland gas field as follows:

(1) To St. Louis, Missouri, pipe line owned by Mississippi River Fuel Co.;

(2) To Memphis, Tenn., owned by Memphis Natural Gas Co.;

(3) To Atlanta, Ga., owned by Southern Natural Gas Corporation;

(4) To New Orleans, La., owned by Interstate Natural Gas Co.; to Baton Rouge, La., and by Southern Gas & Fuel Co., from Baton Rouge, La., to New Orleans.

(5) To Shreveport and Texas, one pipe line owned by Arkansas-Louisiana Pipeline Co., and one owned by United Gas Public Service Co., formerly Magnolia Gas Co.

(6) To El Dorado, Ark., owned by Crusader Oil Co. and leased and operated by Arkansas-Louisiana Pipeline Co.

14.

Approximately 7% to 8% of the gas produced in the Richland gas field since the middle of 1929 has been used for the manufacture of carbon black, and the remainder of the gas has been marketed through the pipe lines named hereinabove, except for a negligible quantity used locally in the field.

16.

All of the contracts herein mentioned, in which a price of less than 3¢ per MCF is stipulated, are contracts for gas to be used in the manufacture of carbon black.

18.

It is further stipulated that during the entire term that gas was produced and sold from the property leased by

E. A. and F. B. Sartor to the Natural Gas & Fuel Corporation, this being the lease under which the plaintiffs claim in this suit, the defendant made monthly reports to its lessors E. A. Sartor and F. B. Sartor as to the amount of gas utilized by defendant off the leased premises and paid its lessors for one-eighth of said gas calculated at the price of three cents per thousand cubic feet corrected to two pounds above atmospheric pressure, which monthly statements and settlements were received and accepted by E. A. and F. B. Sartor without protest and amounted to $21,999.75 through the calendar year 1932. A specimen monthly report made by defendant to its lessors is hereto annexed and made part hereof.

24.

All of the gas produced in the Richland gas field is produced under and by right of leases approximately similar in form to the lease sued on and attached to this suit, except that about two-thirds of the leases stipulate for royalty of 3¢ per MCF in lieu of the royalty of market price specified in the lease sued on in this suit.

25.

Approximately 90% of the payments made by lessees to lessors under the leases stipulating market price in the Richland field have been on the basis of 3¢ per MCF calculated at two pounds above atmospheric pressure, the remaining 10% being at 4¢ per MCF.

27.

The total amount of gas produced in the Richland gas field in the years stated was as follows:

In 1927— 1,507,814 MCF.

In 1928—11,122,997 MCF.

In 1929—42,505,978 MCF.

In 1930—84,480,918 MCF.

68 PLAINTIFFS' EXHIBITS.

In Opposition to Motion for Summary Judgment.

PLAINTIFF EXHIBIT 1.

Answer of plaintiff to motion for summary judgment, with annexed affidavit. (Previously copied into this transcript.)

(Defendant objected to this offering on the ground that it is an affidavit of plaintiffs' counsel, based upon information gained from various lawsuit trials, hence is hearsay, and affiant is not qualified to express an opinion as to the market price of gas in the Richland field, nor to translate into terms of market price at the wells the prices stipulated in the pipeline contracts.)

(The District Court overruled this objection, because it went to the effect, not the admissibility.)

PLAINTIFF EXHIBIT 2.

Affidavit of G. P. Bullis, dated April 14, 1942:

Affiant was employed by several land-owners in the Richland gas field, in Richland Parish, La., early in the year 1931, and continuously from that date to the present time has been engaged in litigation regarding the market

price of natural gas in that field. Affiant has made a thoro study of the physical features of said field, including the pipe lines serving it, the means of marketing the gas, the location of wells pipe lines, receiving stations, gasoline extraction plants, carbon black plants, etc. Affiant has personally read and examined all of the contracts of sale of gas in said field, from the year 1927 to 1935 inclusive, and has examined or cross examined almost all the producers, and all of the leading producers in said field. Affiant has personally conducted in the various Courts, ten trials in the Trial Courts or lawsuits in which the main issue was what was the market price of natural gas in said field, and has conducted appeals from all but one of said trials, to the Appellate Courts of the United States and the State of Louisiana. Affiant has therefore thoroly familiarized himself with the market price of natural gas in the Richland field.

The clients of affiant, the landowners of the Richland field, have never had any knowledge of the market price of gas in that field sufficient for evidence in Court, consequently affiant has been compelled to prove his cases in Court by extracting information from the various defendants in said cases and their officers and agents. It is therefore impossible for plaintiffs in this case to produce affidavits of persons expert in the price of natural gas, on this motion for summary judgment, because all of said experts are hostile to plaintiffs. Affiant is therefore compelled to make this affidavit personally.

This case has been twice tried in this Court before a jury of 12 men. On the first trial, the jury brought in a verdict reading as follows:

"We the jury find for plaintiffs, fixing the market price of gas at 4½¢ from 1927 to 1932 inclusive. Said price to be paid at point of delivery."

The judgment on this verdict was reversed by the Court of Appeals, and a second trial had, in which the jury was

instructed to bring in a verdict only for the period from March 20, 1930, to March 20, 1933, only. For this period, the jury fixed the market price at 4.45¢ per MCF.

On each of these trials, defendant introduced in evidence before the jury, substantially the same claims as are made in the present motion for summary judgment, and in each trial the jury unanimously rejected all of these claims.

The only sales of natural gas produced in the Richland gas field, for delivery to the buyer within the field, during the period from the year 1927 to March 20, 1930, as far as is shown by the evidence in all the cases tried, including the two trials of the case at bar, are as follows:

Sale by Ouachita Natural Gas Co., et al. to Magnolia Gas Co., dated March 31, 1928, for 3¢ per MCF at 8 oz. pressure;

Sale by Palmer Corporation, et als. to Dixie-Gulf Gas Co., dated May 10, 1929, at 3¢ and 4¢ per MCF at 10 oz. pressure;

Sale by Palmer Corporation to Ford, Bacon & Davis, dated Feb. 2, 1926, deliveries in 1927 to 1930, at 4.25¢ per MCF, at 10 oz. pressure;

Sale by Palmer Corp., et als. to Mississippi River Fuel Corp., dated Jan. 15, 1929, for 4½¢ per MCF at 8 oz. pressure;

Sale by Palmer Corp., et als. to Arkansas Natural Gas Co., dated May 10, 1929, at 4½¢ per MCF at 8 oz. pressure;

Sale by Industrial Gas Co. and others to Memphis Natural Gas Co., dated May 24, 1928, at 5¢ per MCF at 8 oz. pressure;

Sale by Ruston Drilling Co. to Natural Gas & Fuel Co., dated Aug. 5, 1927, for small quantity of drilling gas at 3¢ per MCF at 10 oz. pressure;

Sale by T. L. James to Richland Gas Co., dated Sept. 20, 1928, for 3½¢ and 4¢ per MCF at 10 oz. pressure;

A few small sales to employees, farm houses, schools, etc., at prices far above those above stated.

Defendant, Arkansas Natural Gas Corp., paid to plaintiffs 3¢ per MCF at 2 lb. pressure, as the market price of the gas produced from plaintiffs' land during the period from 1927 to March 20, 1930. One thousand cubic feet of gas at 2 lb. pressure contains 10% more gas, and its market price is 10% greater than one thousand cubic feet of gas at 8 oz. or 10 oz. pressure. Hence every one of the above named sales was at a price higher than paid by defendant to plaintiff as the market price under the lease sued on in this suit.

Since every sale of gas during the period involved, was at a higher price, and most of them at a vastly higher price, than defendant paid plaintiffs, it is utterly impossible, and frivolous, for defendant to claim, in its motion for summary judgment, that there is no genuine issue, and no substantial controversy, to dispute defendant's claim that the market price was 3¢ at 2 lb. pressure per MCF.

The affidavit of D. W. Harris attached to defendant's motion for summary judgment, is entirely false and untrue in its statement that the clauses in the contract by which that affiant bought gas in the Richland gas field were extraordinary and different from the ordinary contract of sale.

The affidavit of R. H. Hargrove attached to motion is made by affiant who is Vice-President of the Union Producing Co., which has been sued by these plaintiffs on the

same cause of action which has been sued on by plaintiffs in the case at bar, consequently his opinion is not fair or unprejudiced. Affiant's statements regarding the contents of the contracts for sale of gas to pipelines is false and untrue, as will be seen by reference to the contracts of sale themselves. Said affiant has testified in many cases before juries to the same effect as in his affidavit, and his testimony has been rejected by juries. Affiant's statement of sales is incorrect. The statement that the obligations assumed by the sellers in the pipe line contracts were unique and extraordinary is entirely untrue.

The affidavit of E. N. Florsheim attached to said motion recites sale of gas from Richland Operating Co. to Century Carbon Co. This was not an ordinary sale of gas, but was a contract for the erection and supplying of a carbon-black plant, and delivery of all the gas sold under this contract was outside the Richland gas field.

The affidavit of R. C. Stokes attached to said motion is contrary to the undisputed evidence in the case at bar.

The affidavit of R. G. Taylor attached to said motion has been shown to be incorrect, and the expense account grossly "padded", by evidence in other trials, and the books of Hope Producing Co. do not show the figures stated by this affiant.

The opinion expressed by various affiants in the affidavits attached to defendant's motion for summary judgment, are not fair and impartial opinions, but are the opinions of either of officials of companies being sued on this same cause of action, or of persons doing business with the gas companies and dependent on their favor for a living.

From affiant's long experience and study of the market price of natural gas in the Richland gas field, affiant is of the opinion that said market price was, during the year 1927, more than 3¢ per MCF at 2 lb. pressure, and during the years 1928, 1929 and 1930 was more than 5¢ per MCF at 2 lb. pressure, this opinion being based on the sales made

for delivery within the Richland gas field during said period.

The foregoing stipulation of evidence for appeal transcript in the appeal now pending in this suit, is hereby accepted as a complete and accurate condensation of the said evidence.

Dated and signed by attorneys for plaintiff and defendant, September, 1942.

G. P. BULLIS,
Attorney for Plaintiff.

....,
Attorneys for Defendant.

Filed November 20, 1942, Philip H. Mecom, Clerk, U. S. Dist. Court, West. Dist. of Louisiana.

In the United States District Court for the Western District of Louisiana, Monroe Division.

James M. Sartor, et al.,
vs. Civil Action No. 2387.
Arkansas Natural Gas Corporation.

For Plaintiffs,
Mr. G. P. Bullis,
Ferriday, Louisiana.

For Defendant,
Mr. Elias Goldstein,
(Blanchard, Goldstein, Walker and O'Quin),
Shreveport, Louisiana.

DAWKINS, J.:

The nature of this case has been fully disclosed in former decisions by the Court of Appeals for this Circuit.

Arkansas Natural Gas Corporation v. Sartor, 78 F. (2nd) 924 and 98 F. (2nd) 527.

The matter is now to be considered upon a motion for summary judgment by the defendant as to that part of the claim covering the period dating back more than three years beyond the filing of the suit on March 20, 1933.

The evidence offered on both sides is substantially the same as that in the case of Hemler v. Union Producing Company, 40 F. S. 824, except that it supports more strongly the conclusion that the market price of natural gas at the well in the Richland field did not exceed three cents per thousand cubic feet over the earlier period covered by this suit. It is for the years 1927 to March 20, 1930, which was before all the facilities in the field for marketing the gas had been developed, as was done in later years. Therefore, more of the gas was sold at the well and to other industries during the time now involved than from that date to the end of the life of the field some seven years later. Even the prices stipulated in the pipeline contracts for the years 1927 to 1930 were lower than for subsequent years.

The defendant, plaintiff in the motion for summary judgment, has offered affidavits by experts and other persons who dealt in and handled the gas in the Richland field, as well as in the Monroe field and elsewhere, to the effect that there was a well recognized price at the well in both fields and at no time did it exceed three cents per thousand cubic feet. It has also introduced many leases, contracts and other evidence showing the sale of gas at three cents per thousand cubic feet or less at the well and has established that ninety per cent of the production was paid for at that price.

Nothing was offered by the plaintiffs to dispute this proof except the affidavit of their counsel, which patently deals with the pipeline prices. Evidence as to pipeline prices, as has been held by both this Court and the Court of Appeals, was admissible only if there was no market at

the well, and it appearing from the showing made here without contradiction that there was such a price at the well, the necessity for considering the pipeline contracts or prices and the elements affecting them does not arise in this case. All of the reasons for the summary judgment in the case of Hemler v. Union Producing Company, supra, are applicable to the present case, and are adopted without repitition.

There should be judgment for defendant sustaining the motion for summary judgment, and rejecting plaintiffs' demand.

Proper decree should be presented.

Thus Done and Signed in Chambers on this the 29th day of April, 1942.

(S.) BEN C. DAWKINS,
(Ben C. Dawkins)
U. S. District Judge.

Filed April 30, 1942.

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75 MOTION FOR NEW TRIAL.

(Title Omitted.)

Now into Court come J. M. Sartor, et als, plaintiffs in the above entitled and numbered suit, and respectfully suggest that the opinion and decree herein entered on April 30, 1942, is erroneous, and contrary to the law and the evidence, and that a rehearing or new trial should be granted thereon, for the following reasons, to-wit:

1.

The Court is in error in accepting as conclusive of the market price of gas, the opinion of defendant's Vice-Presi-

dent and the officials of other companies defending themselves against this same claim; the law being that the only admissible evidence to prove the price of gas, is actual sales; and even if opinions were admissible, such opinions should be by unprejudiced witnesses and by witnesses whose qualifications have been first established by cross examination of plaintiff.

2.

The Court is in error in depriving plaintiffs of trial by jury as to the weight to be given the opinions of witnesses.

3.

The Court is in error in holding that defendant introduced in evidence many leases, contracts and other evidence showing the sale of gas at 3 per MCF or less at the well, and has established that 90% of the production was paid for at that price.

4.

The Court is in error in holding that there is a showing made here within contradiction that there was such a price at the well as 3¢ or any other price.

5.

The Court is in error in holding that there was one market price at the well (without stipulating what well is meant), and another market price in the Richland gas field, because it is inherently impossible for there to be two different market prices for gas within the Richland gas field.

6.

The Court is in error in ignoring the pipe line prices, by which 93% of the gas produced in the field was sold, in fixing the market price of gas.

7.

The Court is in error in holding that there is no genuine issue as to any material fact shown in this case.

8.

The Court is in error in failing to note and give effect to the claims made by plaintiffs in their answer to motion for summary judgment and affidavit annexed to motion.

9.

The Court is in error in denying to plaintiffs their constitutional right to trial by jury in this case.

Wherefore plaintiffs pray that a rehearing or new trial be granted herein, and that finally the motion of defendant for summary judgment be denied and overruled; pray for all necessary orders and for general and equitable relief.

(S.) G. P. BULLIS,
Attorney for Plaintiffs.

I hereby certify that copy of the above motion has been served on Blanchard, Goldstein, Walker & O'Quinn, attorneys for defendant, by mailing to them at Shreveport, La., this May 5th, 1942.

(S.) G. P. BULLIS,
Attorney for Plaintiffs.

Filed May 6, 1942.

(Title Omitted.)

For Plaintiff,
Mr. G. P. Bullis,
Ferriday, Louisiana.
For Defendant,
Messrs. H. C. Walker, Jr.,
Elias Goldstein,
Shreveport, Louisiana.

DAWKINS, J.:

After due consideration of the motion for a new trial in the above numbered and entitled cause, I am of the view that the same should be and it is accordingly overruled.

Thus Done and Signed in Chambers on this the 13th day of June, 1942.

(S.) BEN C. DAWKINS,
(Ben C. Dawkins)
U. S. District Judge.

Filed June 13, 1942.

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78 JUDGMENT.

United States District Court, Western District of Louisiana, Monroe Division.

James M. Sartor, et al,
vs. Civil Action No. 2387.
Arkansas Natural Gas Corporation.

Hearing having been had in this case upon the defendant's motion for a summary judgment upon such issues as have been left in the case by the prior decisions of this

Court and of the United States Court of Appeals for the Fifth Circuit, the Court being of the opinion that under the evidence submitted there is no substantial issue of fact and that an adequate showing without contradiction has been made by the defendant of the existence of a market at the well for the gas produced from the Richland Parish Field during the period beginning with the year 1927 and ending March 20th, 1930, which did not exceed three cents (3¢) per thousand cubic feet.

The Court Does Hereby Find As Facts (and that there is no substantial evidence to the contrary), that there was a market at the well for gas produced from the Richland Parish Field during the period beginning with the year 1927 and ending March 20th, 1930, and that the market price of gas at the well in the Richland Parish Field during the period stated did not exceed three cents (3¢) per thousand cubic feet; and Accordingly,

It is Ordered, Adjudged and Decreed that for these reasons and for the reasons stated in the opinion of the Court heretofore filed, the defendant's motion for a summary judgment be and it is hereby sustained, and that the demands of the plaintiffs for additional royalties on gas produced from wells located on lands described in the plaintiffs' petition during the period beginning with the year 1927 and terminating March 20th, 1930, be and they are hereby rejected at their cost.

Thus Done, Read and Signed in open Court on this the 19th day of June, 1942.

(S.) BEN C. DAWKINS,
United States Judge for the
Western District of Louisiana.

Filed June 19, 1942.

80 NOTICE OF APPEAL.

United States District Court for the Western District of Louisiana.

J. M. Sartor, et als,
vs. No. 2387 At Law.
Arkansas Natural Gas Corporation.

Notice is hereby given that J. M. Sartor, D. R. Sartor, and Mrs. Earline Sartor, individually and as natural tutrix of her minor children, Fred Sartor, Daniel R. Sartor and George M. Sartor, plaintiffs in the above entitled and numbered cause, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this action on June 19th, 1942.

G. P. BULLIS,
Attorney for Plaintiffs.

Address:
Ferriday, Louisiana.

Filed Sep. 11, 1942.

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81 APPEAL BOND.

(Title Omitted.)

Know All Men By These Presents, that we, James M. Sartor, D. R. Sarton, and Mrs. Earline Sartor, individually and as natural tutrix of her minor children, Fred Sartor, Daniel R. Sartor and George M. Sartor, plaintiffs in the above entitled and numbered suit, as principals, and National Surety Corporation of New York, as surety, are secured, held and firmly bound unto Arkansas Natural Gas Corporation, defendant in the above entitled and num-

bered suit, as aforesaid, in the full sum of two hundred and fifty dollars ($250.) for the payment of which well and truly to be made we bind ourselves firmly by these presents.

Dated at New Orleans, La., September 11th, 1942.

The condition of the foregoing bond is as follows: Said plaintiffs have appealed from a final judgment rendered by said United States District Court in the above entitled and numbered cause, dated June 19th, 1942, sustaining defendant's motion for summary judgment herein;

Now the condition of this obligation is that if said plaintiffs shall prosecute their said appeal to effect, and answer all costs, if their appeal be dismissed or said judgment be affirmed, or such costs as said Appellate Court may decree in said appeal, then the above obligation shall be null and void; otherwise to be and remain in full force and effect.

Plaintiffs in above suit, namely,
J. M. SARTOR, D. R. SARTOR
& MRS. EARLINE SARTOR,
Individually and as Tutrix,
By (S.) G. P. BULLIS,
Attorney,
Principals in this Bond.

NATIONAL SURETY CORPORATION,
By (S.) J. PARCHMAN HENRY,
(J. Parchman Henry)
Attorney-in-Fact.

Filed September 17, 1942.

82 BILL OF EXCEPTIONS.

Filed Dec. 3, 1942.

(Title Omitted.)

Be It Known And Remembered, that this cause came on regularly for trial of defendant's motion for summary judgment, on April 20th, 1942, before Honorable Ben C. Dawkins, Judge presiding, and during said trial, plaintiffs, J. M. Sartor, et als, opponents of said motion, offered in evidence the following:

"Agreed statement of facts, filed in this case by plaintiffs and defendant jointly on April 18th, 1934."

On April 18th, 1934, plaintiffs and defendant jointly filed in the record of this case in this Court, a document signed by counsel for plaintiffs and defendant, headed as follows:

"Subject to the right of either plaintiffs or defendant to object to the admissibility in evidence of the original contracts themselves on any legal grounds, the parties hereto have agreed that if the Court holds that the original contracts themselves would be admissible in evidence, the following statement of their contents shall be filed in evidence in place of the original contracts. In case any contract, or any part thereof, is held inadmissible in evidence by the Court, then reference to such contract shall be stricken out of this statement. All of the prices stated in these contracts are for gas computed at eight ounces above atmospheric pressure unless otherwise stated."

Next followed a condensation of the contents of 19 written contracts for the sale of natural gas in the Richland gas field, including the following:

"Contract No. VII."

"Dated August 1st, 1929, between Palmer Corporation of Louisiana and Mississippi River Fuel Company.

Quantity:

10% of the gas required by pipe line. Minima and Maxima not being stipulated.

Point of Delivery:

A point in the Monroe Gas Field in Section 24, Township 20, Range 4, Ouachita Parish, La., and in the Richland Gas Field a receiving station near Alto, La., in the NE corner of W½ of the SW¼, Section 11, Township 16, Range 6, Richland Parish.

Price:

For the first three years—5¢;

For the next two years—6¢.

Term of contract twenty years from August 1st, 1929."

Contract No. VIII."

"Dated Jan. 15, 1929, between Industrial Gas Company and Southern Natural Gas Corporation.

Quantity:

16% of the requirements of the buyer's pipe line, gas to be transported into Mississippi, Alabama, Tennessee and Georgia.

Minimum of 4,800,000 cu. ft. per day;

Maximum of 21,000,000 cu. ft. per day.

Point of Delivery:

In the Monroe Gas Field, within one mile of Spyker, La., and not more than five miles from the buyer's receiving station near Guthrie, La.; and in the Richland Gas Field, at a point to be selected by seller in Sections 3, 4, 9, 10, o5, 16, Township 16, Range 6 East.

Price:

For the first three years—4½¢;

For the next two years—6¢ to 6½¢."

Following the aforesaid condensation of 10 contracts of sale, filed in the record in this case as aforesaid, was a heading "Stipulations", followed by 30 numbered unconditional stipulations of facts, and among other things referring to the aforesaid condensation of contracts of sale.

After the aforesaid trial of this case; the said District Judge sustained said motion for summary judgment, and rendered and signed a judgment dismissing plaintiffs' suit on said summary judgment, and plaintiffs have appealed from said judgment, to the United States Circuit Court of Appeals for the Fifth Circuit, which appeal is now pending.

In preparing condensed statement of the evidence on the trial of said motion for summary judgment, to be used in the transcript of appeal, counsel for plaintiffs sought to include in said transcript the above quoted condensations of Contracts Nos. VII and VIII, which counsel claimed was a part of the above quoted offer of evidence introduced

on the trial of the case, which offering had been received without objection, and counsel for defendant objected, on the ground that said condensation of said contracts was not included in said evidence offered by plaintiffs on the trial.

On this controversy as to contents of record on appeal, the said District Court ruled as follows:

"A controversy has arisen between counsel as to whether there should be included in the transcript of appeal as part of the evidence offered by plaintiff, both the general stipulation between counsel filed on the first trial of this case, and the stipulated terms of certain contracts, particularly pipe line contracts. Counsel for defendant, plaintiff in the motion for summary judgment, had offered certain of the general stipulations, to-wit: Nos. 1, 2, 5, 6, 18, 24, 25, and 27, and in addition thereto and subsequently 'all the contracts, the contents of which are heretofore stipulated, by and between counsel at the prior trial of this case, the numbers and descriptions thereof being as follows', which included stipulations as to the contents of contracts numbers 1, 2, 3, 4, 5, 6, 14, 15 and 16. As arranged in the printed record of the former appeal, certified by the Clerk of this Court, on March 25, 1938, these stipulations were printed, the one following the other, and as to the contents of contracts, it was said:

"Subject to the right of either plaintiffs or defendants to object to the admissibility in evidence of the original contracts themselves on any legal grounds, the parties hereto have agreed that if the Court holds that the original contracts themselves would be admissible in evidence, the following statement of their contents shall be filed in evidence in place of the original contracts. In case any contract, or any part thereof, is held inadmissible in evidence

by the Court, then reference to such contract shall be stricken out of this statement."

After the term of these contracts L to XIX had been recited, there appeared a separating line in the printed record, and then the heading "Stipulations", beginning with L and running consecutively to 9, 14, 15, 16, 18, 20, 21, 23, 24, 25, 27, 28, 29 and 30. In other words, apparently, all the joint stipulations were not copied into that printed record. It was copies of this record that were being used by both counsel in this case at the time of the motion for summary judgment.

When it came plaintiff's time to offer evidence on the motion, their counsel offered the answer to the motion, together with the affidavit of himself attached, as well as a later one by the same affiant. The only other offering by plaintiff was agreed statement of facts filed in this case by plaintiffs and defendant jointly, on April 18, 1934."

Nothing was said about the stipulations as to contents of documents, which were, as above indicated, made separately from the general stipulations. It was the impression of the Court that counsel for plaintiffs intended, since defendant had offered some, but not all of its general stipulations, to include them all.

As shown by the written opinion of this case, the Court, as in a previous one against the Union Producing Company, in which counsel for the plaintiff was the same, ruled that, in view of the evidence showing a market price at the well, the pipe line contracts could not be considered, and had it been indicated that his purpose on the trial of this motion was to offer the stipulated contents of these contracts, counsel for defendant would undoubtedly have objected, and the Court, to be consistent, would have held them inadmissible. Besides, as the above quotation

at the beginning of the stipulation about such contracts shows, it was not an agreement that the contracts were admissible or should be considered, but that, if the Court held them so, then the recital of their terms would be used instead of copying the lengthy documents into the record.

Under the circumstances, the Court will allow counsel for plaintiff to attach to his bill of exceptions such of the stipulated terms of these contracts as he sees fits, in order that the Appellate Court may see the basis upon which this ruling is made, in connection with the transcript of the note of evidence taken at the time of the trial of the motion. However, they are not to be considered as part of the record upon which this Court acted and from which this appeal is taken.

Done and signed in chambers at Lake Charles, La., this 25th day of November, 1942.

BEN C. DAWKINS,
U. S. District Judge."

To which ruling of the District Court plaintiffs except and reserve this, their bill of exceptions, and pray that this bill of exceptions be allowed, filed, settled and signed.

G. P. BULLIS,
Attorney for Plaintiffs.

Settled and allowed this 3rd day of December, 1942, in term.

BEN C. DAWKINS,
Judge.

Filed Dec. 3, 1942.

PETITION AND ORDER EXTENDING TIME.

86 (Title Omitted.)

To the Honorable the Judges of said Court:

Now into Court comes J. M. Sartor, et als, plaintiffs and appellants herein, and respectfully show:

1.

On September 11, 1942, plaintiffs gave notice of appeal to the Honorable United States Circuit Court of Appeals for the Fifth Circuit, from final judgment rendered by this Judgment herein.

2.

The Clerk of this Court advises that it will not be practicable to file the transcript of appeal in said Appellate Court within the forty days period after said notice allowed by law.

Wherefore plaintiffs and appellants pray that an extension of time for filing said transcript in said Appellate Court be granted for a period of ninety days from September 11, 1942; pray for all necessary orders and for general relief.

G. P. BULLIS,
Attorney for Plaintiffs.

ORDER.

The foregoing application considered, it is Ordered that plaintiffs in the above entitled and numbered cause are hereby granted an extension of time, and delay, for a period of ninety days from September 11, 1942, in which

to file in the United States Circuit Court of Appeals for the Fifth Circuit their transcript of appeal in this cause.

Signed in chambers at Shreveport, La., this 13 day of October, 1942.

BEN C. DAWKINS,
District Judge.

Filed October 13, 1942.

STIPULATION FOR APPEAL TRANSCRIPT.

87 (Title Omitted.)

To Philip H. Mecom, Clerk of Court:

You are hereby requested to prepare transcript for appeal to the United States Circuit Court of Appeals for the Fifth Circuit in the appeal now pending in the above case, and to include in said transcript, the following documents and none other, to-wit:

1. Plaintiffs' petition, filed March 20, 1933.
2. Defendant's answer, filed Nov. 5, 1933.
3. Verdict of jury, dated April 20, 1934.
4. Judgment of District Court, dated May 15, 1934.
5. Mandate of Court of Appeals, dated Oct. 7, 1935.
6. Verdict of July, dated Oct. 14, 1937,
7. Judgment of District Court, dated Dec. 30, 1937.

8. Mandate of Court of Appeals, dated Dec. 20, 1938.

9. Judgment of District Court, dated Oct. 23, 1939.

10. Mandate of Court of Appeals, dated July 10, 1940.

11. Motion for summary judgment, filed by defendant Apr. 5, 1942 (not including annexed affidavits).

12. Answer to motion, filed by plaintiff Apr. 14, 1942, including affidavit to answer.

13. Stipulation of plaintiff and defendant of evidence for appeal transcript.

14. Opinion of District Court, filed April 30, 1942.

15. Motion for new trial, filed by plaintiff May 6, 1942.

16. Judgment of District Court on motion for new trial, filed June 13, 1942.

17. Final judgment of District Court, filed June 19, 1942.

18. Notice of appeal.

19. Appeal bond.

(S.) G. P. BULLIS,
Attorney for Plaintiffs.

Filed November 20, 1942.

88 CLERK'S CERTIFICATE.

I, PHILIP H. MECOM, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing eighty-seven (87) pages contain and form a full, true and correct copy of the record, and all proceedings had in a cause entitled J. M. Sartor, et al, vs. Arkansas Natural Gas Corporation, No. 2387 on the Law Docket of this Court, as fully as the original of same remains on file and of record in this office, at Shreveport, Louisiana, the said transcript having been prepared in accordance with Designation filed by counsel in said cause, a copy of which accompanies this transcript.

Witness my official hand and the seal of this Court, at the City of Shreveport, Louisiana, on this the 8th day of December, A. D. 1942.

(Seal)

PHILIP H. MECOM,
Clerk,
By MINA E. HOLT,
Deputy Clerk.